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THE attention of the bar is called to recent amendments of the rules of the Supreme Court of the United States, promulgated January 26, 1891, which in effect require that all appeals, writs of error and citations, must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day. The amendment to rule 9 makes it the duty of the plaintiff in error or the appellant to docket the case and file the record thereof with the clerk of the court by or before the return day, whether in vacation or in term time. A provision, however, is made for the enlargement of this time, and also for dismissal of the case by the defendant in error or the appellee, in case of failure on the part of the appellant to comply with the rule. The amendment, as to the time within which writs must be made returnable, does not apply to the remote western States and Territories wherein the time is extended to sixty days.

THE retirement of Mr. Charles F. Beach, Jr., as editor of the *Railway and Corporation Law Journal*, which position he has occupied so long and so acceptably to its readers, is deserving of notice. Mr. Beach has shown himself to be a man of more than ordinary ability, especially in the direction of railway and corporation law, and his withdrawal from the publication in question will be generally regretted, though his successor, Mr. Wayland E. Benjamin, of the New York bar, is said to be in every respect qualified.

THE decision of the Supreme Court of the United States against the constitutionality of the Minnesota meat inspection law, has been followed in the case of *ex parte* Rebman, wherein the validity of a similar statute of the State of Virginia was involved. This law prohibited as unlawful the selling of beef slaughtered more than one hundred miles from the place where it was offered for sale, without having been inspected. The court says that the only question in the case is whether such legislation as that of Virginia is liable to the objection that, by its necessary operation, it interferes with the enjoyment of rights granted or secured by the constitution. This question, it holds, admits of but one answer. The statute is in effect a prohibition upon the sale, in Virginia, of meat which though entirely wholesome, is the product of animals slaughtered away from the place of sale. Undoubtedly a State may establish regulations to protect the people against the sale of unwholesome meats, but it may not, under the guise of exerting its police power, or enacting inspection laws, make discriminations against the products and industries of some of the States in favor of its own or other States. The statute, in the view of the court, is, for all practical ends, a statute to prevent the citizens of distant States having for sale fresh meats, from coming into competition upon terms of equality with local dealers, and as such its repugnancy to the constitution is manifest. This decision, taken in connection with others which have gone before, seems to make it clear that legislation, which by its necessary operation discriminates against products coming from other States, cannot be sustained.

THE recent English case of Gordon v. Silber seems to raise a new question, with regard to the lien of an innkeeper upon the goods of his guest. The question arose there how far an innkeeper has a lien on the luggage and goods which are the separate property of a married woman who goes to and stays at his inn accompanied by her husband. It appeared that the defendant had stayed at the plaintiff's hotel, and was subsequently joined by his wife, who brought with her a considerable amount of valuable baggage, including clothing and jewelry, etc. The husband left some days before the wife, and he having become insolvent, the hotel keeper retained the baggage of the wife under his right of lien for the non-payment of a balance due him. The wife contended that her effects were her separate property, and could not, therefore, be retained by the hotel keeper for a debt due from her husband. Lord Justice Lopes gave judgment for the hotel keeper, on the ground that, as he was

obliged by the common law to receive the husband and wife as guests, so he had a right of lien over all the goods brought by them into the house. The right of lien was commensurate with the hotel keeper's liability, and the latter was not in any way bound to distinguish between husband and wife as regarded debts on their property. Regarding the guest as the person to whom the innkeeper looks for payment, there is no doubt that the lien attaches upon all goods which he brings as his own, and which he receives in his character of innkeeper. The actual title to the goods is immaterial, as it is the innkeeper's duty to receive them; but it is otherwise if the innkeeper has notice of the guests' want of title, or if the goods are clearly not received as his. "It is admitted," said Coleridge, C. J., "that in general an innkeeper has a lien on all the goods which the guest brings with him as his own, whether they are his own or another's." And the result in the above case is in accordance with the law as laid down in Smith v. Dearlove, 6 C. B. 132, that the right of lien of an innkeeper depends upon the fact that the goods came into his possession in his character of innkeeper as belonging to a guest.

NOTES OF RECENT DECISIONS.

ADMIRALTY—MARINE TORT—CONTRIBUTORY NEGLIGENCE—DIVIDED DAMAGES.—The Supreme Court of the United States, in the case of The Max Morris v. Curry, 11 S. C. Rep. 29, decided a question as to the effect of contributory negligence in suits in admiralty for injuries, upon which there has been a conflict of opinion in the lower of the United States courts. It was held that a longshore-man who, while in the employ of a stevedore, and engaged in loading a vessel, is injured partly through the vessel's negligence and partly through his own, by falling from the bridge, is not entirely prevented by his contributory negligence from a recovery upon libeling the vessel, but is entitled to a decree for divided damages. It seems from the opinion of Blatchford, J., that the doctrine of an equal division of damages in admiralty, in the case of a collision between two vessels, where both are in fault, has long been the rule in England, but was first established by this court in The Catherine v. Dickinson, 17 How. 170, and has since been applied in many cases. As to the particular question here presented, Judge Deady, of the Oregon District, held that the libelant could not recover for an injury caused by his own negligence which contributed to the result, even though the vessel was in fault. Peterson v. Chandos, 4 Fed. Rep. 645; Holmes v. Railway Co., 4 Fed. Rep. 523. The same rule was recognized by Judge Hughes, of the Virginia District, in The Manhassett, 19 Fed. Rep. 430. On the other hand Judge Pardee, of the Louisiana District, in The Explorer, 20 Fed. Rep. 135, and The Wanderer, *Id.* 140, laid it down as a rule that in cases of marine tort, courts of admiralty could exercise a conscientious discretion, and give or withhold damages upon enlarged principles of justice and equality. The same view was applied by the lower court in the decision of the present case, and by the District Court of New York, in The Truro, 31 Fed. Rep. 158, and by the District Court of Virginia in The Eddystone, 33 Fed Rep. 925. This principle, it is contended, is sanctioned by the language used by the United States Supreme Court in The Marianna Flora, 11 Wheat. 1, 54, and the rule of dividing the damages has been followed in many well considered cases in the circuit courts of the United States, which cases were in admiralty, and were not cases of collision between two vessels. It is concluded that the rule is in the direction which appears to be manifestly just and proper, and is applicable to all cases of marine tort founded upon negligence.

WILLS—UNDUE INFLUENCE—CONFIDENTIAL RELATIONS—In the decision of the case of Bancroft v. Otis, 8 South. Rep. 286, the Supreme Court of Alabama depart from the established doctrine in that State, overruling some previous declarations of the court, on the subject of the effect of confidential relations as establishing undue influence in the making of wills. The holding of the court was, that the fact that confidential relations had existed between the testator in his life-time and a legatee under the will who offers it for probate, is not alone sufficient to raise a presumption of undue influence on the part of the proponent and to cast on him in case of a contest, the burden of proving that the will was not induced by fraud and coercion on his part. It has been previously ruled by the same

court in Shipman v. Furniss, 69 Ala. 555, and Wadell v. Lanier, 62 Ala. 347, and Moore v. Spier, 80 Ala. 129, that the burden of proof was cast on the devisee to show that the will in question was not superinduced by fraud or undue influence, but was the result of free volition on the part of the testator. And following this case it was said in Lyons v. Campbell, 88 Ala. 469, that "whenever a confidential relation exists, such as principal and agent, during the life-time of the deceased, continuing to his death, and the agent is a favored legatee under the will, the presumption is that by improper acts or circumvention —by the exercise of some undue influence— the testator was induced to bestow the gift or legacy contrary to his desire and free will, and the burden of proof is cast on the legatee to show that the will was the result of his own volition and not procured by fraud or undue influence." Somewhat similar language was used in Daniel v. Hill, 52 Ala. 437. The court in the present case examine closely into these cases which it is found involve the construction of contracts and not of wills, transactions between living persons and not a transaction out of which property is received by one as a gift on the death of the other, and the court conclude that the same rule in respect to the burden of proving undue influence does not apply in the cases of devises, bequests and wills as obtains in regard to gifts, conveyances and contracts *inter vivos*. The position taken in the authorities is that the reasons of the rule which impute undue influence to confidential relations in respect of contracts do not apply to wills; and that before testamentary disposition can be presumed to have been unduly influenced, something in addition to the mere existence of confidential relations must be shown, as that the proponent initiated the preparation of the instruments or wrote it himself or gave directions as to its contents or selected the witnesses, or in short that the beneficiary was active in respect to the execution of the will, and that no manner or degree of confidential relationship of itself will suffice to cast the burden of proving that the testamentary act was not unduly influenced upon him. Citing, Schouler, Wills, 246; 1 Jarm. Wills, 35, 36, and notes; 1 Red. Wills, 537; Gardiner v. Gardiner, 34 N. Y. 155, 163; Post v. Mason, 91 N. Y. 539; Elliott's Will, 2 J. J. Marsh. 341; Tyson v. Tyson, 37 Md. 567; Rutherford v. Morris, 77 Ill. 397; Sechrest v. Edwards, 4 Metc. (Ky.) 163, 174; Baldwin v. Parker, 99 Mass. 79, 85; McKeone v. Barnes, 108 Mass. 344; Waddington v. Buzby, 10 Atl. Rep. 862; Dale's Appeal, 17 Atl. Rep. 757; Wheeler v. Whipple, 44 N. J. Eq. 141, 145, 14 Atl. Rep. 275; Boyse v. Rosborough, 6 H. L. Cas. 2, 48; Macall v. Macall, 10 Sup. Ct. Rep. 705. The court further examined the question upon principle and conclude to return to the rule as they say it was really laid down in Lyons v. Campbell, 88 Ala. 462, that the existence of confidential relations alone is not presumptive evidence of undue influence, citing as authority in that State, Hill v. Barge, 12 Ala. 687; Daniel v. Hill, 52 Ala. 430. See also dissenting opinion of Handy, J., in Meek v. Perry, 36 Miss. 190.

FRAUDULENT CONVEYANCE—CHANGE OF POSSESSION—CREDITORS, PRIOR AND SUBSEQUENT.—A question of the construction of the Missouri statute as to fraudulent conveyance, upon which the St. Louis and Kansas City Court of Appeals differed, and which therefore was certified to the supreme court, came before the latter court in Knoop v. Nelson Distilling Co., 14 S. W. Rep. 822. The question was as to the proper construction of § 2505 Rev. Stat. 1879 (now § 5178 Rev. Stat. 1889), which in effect renders a sale of chattels unaccompanied by change of possession fraudulent and void "as against the creditors of the vendor or subsequent purchaser in good faith." The interpretation put thereon by the Kansas City Court of Appeals, in Worley v. Watson, 22 Mo. App. 546, is that the word "creditor" as employed therein is to be limited to subsequent creditors, while the St. Louis Court of Appeals in the case at bar—26 Mo. App. 303—rules that the word "creditors" as there used means and includes prior as well as subsequent creditors. The supreme court says that, after having given the two opinions a careful examination, they have reached the conclusion that the construction made by the St. Louis Court of Appeals is the correct one.

PARTNERSHIP—POWER OF PARTNER TO BIND FIRM.—The cases upon the subject of implied powers of partners are well collected by the Supreme Court of Kansas, in Lee v. First Nat. Bank, 25 Pac. Rep. 196, where it was

held that a partner in a non-trading firm has no implied power to bind the firm by the execution of commercial paper in the name of the firm. Where one member of a partnership of occupation and employment executes a note in the firm name to a bank, without the knowledge of the other member, and in direct violation of the articles of copartnership, the payment of such note cannot be enforced against the firm. Simpson, C., says:

In partnerships of occupation, when one member executes a note in the firm name, the holder must show express or implied authority from the firm to make the note, before a recovery can be had. Smith v. Sloan, 37 Wis. 285; Judge v. Braswell, 13 Bush, 67; Horn v. Bank, 32 Kan. 513, 4 Pac. Rep. 1022. In commercial partnerships a note executed by one member in the firm name is *prima facie* the obligation of the firm, and if one of the parties seeks to avoid its payment, the burden of proof lies upon him to show that the note was given in a matter not relating to the partnership business, and that also with the knowledge of the holder of the note. Deitz v. Regnier, 27 Kan. 94. In Bays v. Conner, 105 Ind. 415, 5 N. E. Rep. 18, and in Smith v. Sloan, 37 Wis. 285, it is held that notwithstanding the fact that the proceeds of the note were applied to the payments of the firm, one member of a non-trading partnership cannot bind the other by the execution of a note in the firm name. This, for the reason that there is a want of power, and the application of the proceeds is not controlling or decisive of the question of authority. The case of Deardorf v. Thacher, 78 Mo. 128, is one in which a member of a partnership of three persons who were engaged in the real-estate, loan, and insurance business, purchased of a lumber dealer quantities of lumber on the credit of the firm. The lumber was delivered by the dealer, without any knowledge on his part that it was not being bought for or applied to partnership business, and that he took the note in good faith according to the credit extended. The lumber dealer brought an action on the firm note that was executed by the member of the partnership who purchased the lumber. The other members of the firm denied, under oath, the execution of the note. The court held that they were not liable. The syllabus of the case is to the effect that "the members of a firm engaged in the insurance, real-estate and collecting business, have no implied power to bind each other by commercial paper in the name of the firm." The same rule has been applied to partnerships in mining in some English cases; in milling (Lanier v. McCabe, 2 Fla. 32); in establishing and carrying on waterworks (Broughton v. Water-Works, 3 Barn. & Ald. 1); in gas-works (Bramah v. Roberts, 3 Bing. N. C. 963); in publishing (Pooley v. Whitmore, 10 Heisk. 629); in planting (Prince v. Crawford, 50 Miss. 344; Benton v. Roberts, 4 La. Ann. 216); in farming (Greenslade v. Dower, 7 Barn. & C. 635); in sugar refining (Livingston v. Roosevelt, 4 Johns. 251); in keeping a tavern (Cockey v. Bank, 3 Ala. 175); in owning a ship (Williams v. Thomas, 6 Esp. 18); in digging tunnels (Gray v. Ward, 18 Ill. 32); in carrying on a laundry (Neale v. Turton, 4 Bing. 149); in practicing law (Hedley v. Bainbridge, 3 Q. B. 316; Garland v. Jacomb, L. R. 8 Exch. 216; Levy v. Pyne, 1 Car. & M. 453; Breckinridge v. Shrieve, 4 Dana, 375); in practicing medicine or surgery (Crosthwait v. Ross, 1 Humph. 23; Lewis v. Reilly, 1 Q. B. 349); and in keeping a store and rope-walk (Wagnon v. Clay, 1 A. K. Marsh. 157). In addition to all this, it is expressly stated in the articles of copartnership that it is formed for the purpose of carrying on the real estate, loan, and insurance business on commission. It is also agreed in the articles of copartnership that neither of the said partners shall subscribe a bond, sign or indorse any note of hand, accept or indorse any draft or bill of exchange, or assume any other liability in the name of the firm, without the written consent of the other. These conditions embodied in the articles make it clear beyond all dispute that this was a partnership of occupation and employment, and not a trading or commercial one. It is said, however, on behalf of the bank, that it could not be bound by these unpublished restrictions; but, if we are right in the determination of the character of this partnership, then the plain duty of the bank, when one of the partners applied to it for a loan in the firm name, was to investigate his authority, and if investigation had taken place, knowledge of the restrictions would have followed.

DISSEISIN AND ADVERSE POSSESSION.

I Disseisin.
- Hostility.
- Exclusiveness.
- Possession.
- Knowledge of Owner.

II Adverse Possession.
- Continuity.
- Abandonment.
- Acknowledgment of Outstanding Title.
- Entry of Owner.

In the present article, it is proposed to state those doctrines of the law which answer the query as to when the statute of limitations will run in favor of a wrongful possessor of real property and bar the owner's right therein.

It is well to mark the distinction, not always kept up, between title by limitation, and title by prescription. The former is only applicable to corporeal real property, although extended by analogy to things incorporeal; while the latter is only applicable to things incorporeal. This distinction is important in considering the effect of a lapse of time. In the first case it merely bars the remedy, while in the second, it raises the presumption of a grant.

The statute of limitations begins to run when a cause of action accrues. The cause of action of ejectment is an ouster, which may be by either a continuing trespass or a disseisin. The former being a new cause of action, each moment that it is continued, is never barred by the statute. The nature of

a disseisin is different, the statute beginning to run from the time that it occurs.[1]

Although a cause of action of ejectment arises from disseisin, yet it does not continue as such, *i. e.*, as cause of action of ejectment, without being kept in existence by adverse possession. Both are therefore necessary to effect a bar.

It has sometimes been said that the terms disseisin and adverse possession were synonymous;[2] yet from their general use it would seem more exact to say that a disseisin gave rise to that kind of holding known as adverse possession.[3]

DISSEISIN.—Technically the term seisin means possession with the intent on the part of him who holds to claim a freehold estate;[4] but in this connection it means possession of any estate under claim of title.[5] Disseisin is defined as "a privation of seisin."[6] Seisin cannot be in abeyance;[7] therefore disseisin is not merely depriving of seisin him who was before seised, but it invests the disseisor with the seisin.[8]

In every disseisin there is a (1) hostile, (2) exclusive, (3) taking possession, (4) with the knowledge of the owner, actual or presumed.

Hostility.—To constitute disseisin there must be an unlawful entry under claim of title adverse to the owner; or the entry being lawful, there must be such subsequent adverse claim of title.[9]

The mere possession of land without any claim of right gives no title however long it may continue.[10] It is the entry or occupation with the intention to claim title that constitutes a disseisin; the *intention* guides the entry and fixes its character.[11] When the question as to whether or not there has been a disseisin is before the court, the whole inquiry is reduced to the fact of entering and the *quo animo*.[12]

Intent to claim adversely being a necessary element, disseisin cannot be committed by mistake;[13] thus, where the owner of a lot enclosed with her own a part of the adjoining lot, under a mistaken belief that it was a part of her own, and exercised rights of ownership over it: held, that the intention of the owner not being to claim beyond her own lot, such possession was not adverse. Simple belief on her part of her right to the land is not equivalent to, nor will it supply the place of the claim required by the law, and neither will possession establish the *quo animo*.[14]

The hostile claim may be evidenced in various ways. Although it is said that disseisin is not to be presumed from the fact of sole possession,[15] for possession is presumed to be in subordination to the title of the legal owner until the contrary is shown;[16] yet possession for a great length of time has been held competent evidence for the jury of the possession being adverse.[17]

[1] Cruises Digest, Tit. XXXI, ch. II, Sec. 22. Reading v. Rawstern, 3 Ld. Ray., 830.

[2] Tiedeman R. P. Sec. 693.

[3] See for instance, Prest. Abst. 284.

[4] Towle v. Ayer, 8 N. H. 58.

[5] Tiedeman R. P., Sec. 693.

[6] Bouvier's Law Dic., Tit. Disseisin.

[7] Wash. R. P., Book 1, ch. 11 Sec. 97.

[8] 2 Prest. Abst. 284; Tiedeman R. P., Sec. 693.

[9] See authorities cited in the following notes. The language of some of the cases would indicate that claim of title was not necessary if actual possession was taken. See the Proprietors, etc. v. Springer, 4 Mass. 415; Grafton v. Grafton, 8 S. & M. (Miss.) 77.

[10] La Frombois v. Jackson, 8 Cow. 589; Bradstreet v. Huntington, 5 Pet. 402, 440; Ricard v. Williams, 7 Wheat. 59; Brandt v. Ogden, 1 John. 156; Grube v. Wells, 34 Ia. 148; Jones v. Hockman, 12 Ia. 101; Creekmur v. Creekmur, 75 Va. 430.

[11] Ewing v. Burnet, 11 Pet. 41.

[12] Grube v. Wells, 34 Ia. 148; Bradstreet v. Huntington, 5 Pet. 402; Skinner v. Crawford, 54 Ia. 119; Livingston v. Peru Iron Co., 9 Wend, 511; La Frombois v. Jackson, 8 Cow. 589; Hockmoth v. Des Grands, 39 N. W. R. (Mich.) 737; Flynn v. Lee, 7 S. E. R. 440; Bradley v. West, 60 Mo. 33; Ricard v. Williams, 7 Wheat. 59; Bates v. Norcross, 14 Pick. 224; Rapalje & Lawrence's Law Dic., Tit. Disseisin; Angell on Limitations, Sec. 390.

[13] Ross v. Gould, 5 Greenl. (Me.) 204; Brown v. Gay, 3 Greenl. (Me.) 126; Howard v. Reedy, 29 Ga. 152; Skinner v. Crawford, 54 Ia. 119; Lincoln v. Edgecomb, 31 Me. 345; Brown v. Cockerell, 33 Ala. 38; Huntington v. Whaley, 29 Conn. 391; Enfield v. Day, 7 N. H. 457; Grube v. Wells, 34 Ia. 148; Mills v. Penny, 74 Ia. 172; Wacha v. Brown, 78 Ia. 432, s. c., 43 N. W. R. 269.

[14] Grube v. Wells, 34 Ia. 148. There seems to be a diversity of holdings upon this question. The cases are not all to be reconciled upon any principle. The better rule has thus been stated in Alabama: "If a party occupy up to a certain fence because he believes it to be the line, but having no intention to claim up to the fence if it should be beyond the line, an indispensable element of adverse possession is wanting. The intent to claim which is set up is upon the condition that the fence is upon the line." Brown v. Cockerell, 33 Ala. 45. See Crapo v. Cameron, 61 Ia. 447; Tex v. Pflug, 39 N. W. R. 839; French v. Pearcee, 8 Conn. 430; Ricker v. Hibbard, 73 Me. 105.

[15] Ricard v. Williams, 7 Wheat. 59, 121.

[16] Smith v. Hosmer, 7 N. H. 436; Lund v. Parker, 3 N. H. 49.

[17] Nickle v. McFarlaner, 3 Watts, 165; Fishar v. Prossar, Cowp. 217.

It is not necessary that one claiming title by adverse possession to show that he ever made claim of title to the land by word of mouth.[18] It is said that "Actual possession and improvement of the premises, as owners are accustomed to improve their estate, without any payment of rent, or recognition of title in another, or a disavowal of title in himself, will, in the absence of all other evidence, be sufficient to raise a presumption of his entry and holding as absolute owner; and unless rebutted by other evidence will establish the fact of a claim of title."[19] Where one had driven piles into the ground which was covered by a mill pond belonging to another, and had erected and maintained buildings upon them for sixty years; Sedgwick, J., says: "This is certainly such an open and visible occupation as must from the nature of the subject constitute a disseisin."[20] The payment of taxes is *evidence* of a claim of title and its extent.[21] The hostile claim may exist wholly in parol or it may be asserted under color of title.[22] The distinction between mere claim of title and color of title, which is found in the books, is important when we come to consider the kind of posession necessary to be taken to constitute a disseisin. Color of title may be defined to be a writing upon its face professing to pass title, and defining the extent of the claim, but which does not convey, either from a want of title in the person making it or from the defective conveyance that is used.[23]

A quitclaim deed from one who is not shown to have had any color of title, or possession, is not color of title.[24]

If entry is made under color of title the possession will be adverse, however groundless the supposed title may be.[25] Even where one having no title, conveys to a third person, and the latter enters under the conveyance the law holds him to be a disseisor.[26] Every disseisin will not give rise to adverse possession; it must be under a *bona fide* claim of right. "The *animo* or intent with which an entry is made must be *bona fide* an entry, believing in good faith that the land is his and that he has title."[27] The law presumes that all men act in good faith until there is some evidence to the contrary, and in the absence of evidence, color of title is presumed to have been so acquired.[28]

The good or bad faith is not the result of color of claim. The faith whether good or bad depends upon the purpose with which the color is obtained, and the reliance placed upon the claim and the color. A party receiving color of title knowing it to be worthless, or in fraud of the owner's rights, although he holds the color and asserts the claim, cannot render it availing because of the want of good faith.[29] A *defect* in the title, if known to the purchaser of land when he purchases, is not enough to establish the fact that he was not a purchaser in good faith; if the purchase is made with an honest purpose of obtaining title, and under a *bona fide* belief that the party is getting title.[30] In determining *bona fides* of holder of deed the question is, did he know or believe that the vendor did not have title.[31]

If a disseisor claims a less estate than the fee, then adverse possession for the statutory period will not give him the fee, but only such estate as he claimed.[32]

[18] Barnes v. Light, 116 N. Y. 34, s. c., 22 N. E. R. 441.

[19] La Frombois v. Jackson, 8 Cow. 589.

[20] Boston Mill Corporation v. Bullfinch, 6 Mass. 229.

[21] The S. C. & I. F. Town Lot & Land Co. v. Wilson, 50 Ia. 422, 425.

[22] Hamilton v. Wright, 30 Ia. 480.

[23] Beverly & McB. v. Burke, 9 Ga. 440; Veal v. Robinson, 70 Ga. 809; Walls v. Smith, 19 Ga. 8; Field v. Boynton's Admr., 33 Ga. 239; Field v. Columbet, 4 Sawyer (U. S.), 523; Hamilton v. Wright, 40 Ia. 480; United States v. Cameron, 21 Pac. R. 177. The term has sometimes been extended further and descent cast, or parol agreement have been said to be color of title. Teabout v. Daniels, 38 Ia. 158; Niles v. Davis, 60 Miss. 750; McClellan v. Kellogg, 17 Ill. 498. As to confusion in use of this term, see 75 Va. 438.

[24] Woods v. Bank, 14 N. H. 101.

[25] La Frombois v. Jackson, 8 Cow. 589; Beverly & McB. v. Burke, 9 Ga. 440; Jackson v. Ellis, 13 John. 120; Clapp v. Bromaghan, 9 Cow. 530; Jackson v. Woodruff, 1 Cow. 276.

[26] Bradstreet v. Huntington, 5 Pet. 401.

[27] Livingston v. Peru Iron Co., 9 Wend. 511; Creekmur v. Creekmur, 75 Va. 430. Tyler maintains with much good sense, that good faith is not necessary; but it is not believed that the adjudicated cases support that view. See Tyler on Ej. & Ad. Enj., p. 685 *et seq.*

[28] Brook v. Bruyn, 35 Ill. 392; McMillan v. Erwin, 58 Ga. 427.

[29] Hardin v. Gouveneur, 69 Ill. 140.

[30] Smith v. Ferguson, 91 Ill. 304.

[31] McMillin v. Erwin, 58 Ga. 427; Den v. Hunt, 2 N. J. L. 493.

[32] Ricard v. Williams, 7 Wheat. 59.

[33] Putman Free School v. Fisher, 34 Me. 172; Proprietor, etc. v. Call, 1 Mass. 483.

[34] Whittington v. Wright, 9 Ga. 23; Barr v. Gratz's Heirs, 4 Wheat, 213, 223.

[35] Tiedeman Real P., Sec. 698.

Exclusiveness.—Before there can be a disseisin in fact there must be an ouster of the true owner if he is in actual possession. There cannot be two distinct and independent seisins of the same land at the same time.[33] Therefore if the intruder and the owner are both in possession at the same time, only one of them can have the seisin; and in such case the seisin follows the title and remains in the owner.[34] But exclusive possession of a part, if title is claimed only to such part, will work a disseisin.[35]

If the entry was originally permissive, as in a fiduciary capacity, such as, guardian; agent; tenant at will; or for years; or tenant in common; there must be some decisive act or declaration amounting to an ouster, to make the possession adverse.[36] The seisin of one tenant in common is the seisin of the other. One can never be disseised by another without an actual ouster. "By *actual ouster* is not meant a physical eviction, but a possession attended with such circumstances as evince a claim of exclusive right and title, and a denial of the right of the other tenants to participate in the profits."[37]

Possession.—As to the entry and taking possession necessary, there is a marked distinction, before alluded to, between entry with mere claim of title, and entry under color of title.

When there is mere claim of title without color, the disseisin extends no further than actual possession is had.[38] In defining what constitutes such possession under these circumstances it is said: "There must be an actual occupancy, a *pedis possessio*, a substantial enclosure by fence sufficient for the protection of the crops. It must be marked by definite boundaries."[39] Where a high bank prevented the intrusion of cattle it was held a sufficient enclosure; the court then saying, that, "boundary by navigable river, continued ledge of rock, or mountain of difficult ascent or decent would be sufficient."[40] When trees are felled and lapped and land so enclosed, "This mode of taking possession is too loose and equivocal."[41]

Neither actual occupation, cultivation or residence are necessary to constitute actual possession, when the property is so situated as not to admit of any permanent or useful improvement. In such case the exercise of such acts of ownership over it as are necessary to enjoy the ordinary use of which it is capable, and acquire the profits it yields in its present condition, will amount to actual possession.[42]

If entry is made under *color of title* the disseisin extends to all of the land covered by the title.[43] It is not necessary, to have this effect, that the color of title be recorded.[44]

This rule is subject to several qualifications:

1. If the owner be at the same time in possession of part of the land, claiming title to the whole, then his seisin extends by construction of law to all of the land which is not in the occupancy of the disseisor.[45]

2. The doctrine of adverse constructive possession of lands, by the cultivation of a part, accompanied by a claim of the whole, under color of title, does not apply to large tracts of land, not purchased for the purpose of cultivation and permanent improvement.[46]

3. Where a tract of land covered by a deed is divided into lots, the possession of one lot adversely will not create a constructive adverse possession of the other parts of the tract; such adverse constructive possession cannot be extended beyond the lot actually occupied.[47]

[33] Martin v. Jackson, 27 Pa. St. 554; Hall v. Stevens, 9 Met. (Mass.) 418; Clymer's Lessee v. Dawkins, 3 How. 674; McClung v. Ross, 5 Wheat. 116.

[34] Burns v. Byrne, 45 Ia. 285; Fishar v. Prossar, Cowp. 217.

[35] Blood v. Wood, 1 Met. (Mass.) 528; Sharp v. Brandow, 15 Wend. 597; Miller v. Shaw, Serg. & R. 129; Cresap v. Huston, 9 Gill (Md.), 269 Lessee of Clark v. Courtney, 5 Pet. 318; Green v. Liter, 8 Cranch, 229; Turney v. Chamberlain, 15 Ill. 271; Barr v. Gratz's Heirs, 4 Wheat. 213.

[36] Livingston v. Peru Iron Co., 9 Wend. 511.

[40] Jackson v. Holstead, 5 Cow. 216.

[41] Per. Kent, C. J., in Jackson v. Shoonmaker, 2 John. 230.

[42] Ewing v. Burnet, 11 Pet. 41, 53; Booth & Graham v. Small & Small, 25 Ia. 177.

[43] Thompson v. Burhaus, 79 N. Y. 93; Turney v. Chamberlain, 15 Ill. 271; Barr v. Gratz's Heirs, 4 Wheat. 213.

[44] Minot v. Brooks, 16 N. H. 374; Lea v. Polk County Copper Co., 21 How. 493; Landes v. Brant, 10 How. 348.

[45] Lessee of Clark v. Courtney, 5 Pet. 318: Barr v. Gratz, 4 Wheat. 213.

[46] So held where deed covered 783 acres and only 2 acres were actually occupied. Jackson v. Woodruff, 1 Cow. 276; also where there was an actual occupancy of 5 acres under a deed conveying 2,000 acres. Chandler v. Spear, 22 Vt. 388; Jackson v. Olitz, 8 Wend. 440. But see, Ellicott v. Pearle, 10 Pet. 412.

[47] Grimes v. Ragland, 28 Ga. 123; Jackson v. Richards, 6 Cow. 617; Sharp v. Brandow, 15 Wend. 597.

Knowledge of Owner.—The ground upon which the junior claimant acquires title by adversary possession, is the supposed *laches* of the owner, or his presumed acquiescence in such possession.[48] Laches or acquiescence cannot be presumed unless the owner has or may be presumed to have notice of the possession.[49] Therefore it is not only necessary that there be *possession* which is *hostile* and *exclusive* but the true owner must have *notice* of such possession before there will be disseisin.[50]

It is sometimes said that the possession must be *open* and *notorious*, which subserves the purpose of giving notice to the owner; but such is not necessary if the owner has *actual knowledge*.[51] If the owner has not actual knowledge, then the possession must be visible, open and notorious, which operates as constructive notice to all the world.[52]

ADVERSE POSSESSION—*Continuty.*—The disseisin being effected and the disseisor being invested with a wrongful possession adverse to the owner, such adverse possession must continue uninterrupted for the full time fixed by the statute of limitations in which actions for the recovery of real property may be brought.[53] This possession need not be held in person by the disseisor; he may hold by his tenant.[54]

The original elements of the disseisin must continue during such adverse possession; that is, possession which is notorious, hostile, and exclusive must exist for the statutory period. Any thing that destroys any of these elements, destroys the adverse character of the possession. In the language of some of the courts, "it purges the disseisin." This may be done in three ways, viz: (1) by abandonment; (2) by acknowledgment of outstanding title; (3) by entry of owner.

Abandonment.—Abandonment, within the time of limitation, destroys possession or its notoriety, stops the running of the statute, and revests the owner with the seisin.[55] But if the time has once elapsed, a subsequent abandonment does not have this effect.[56] The property may be vacated for brief intervals where there is no intention to abandon, and the running of the statute will not be interrupted.[57] If one of two disseisors who hold as tenants in common, abandons, the abandonment enures to the benefit of the remaining disseisor and not to the owner.[58]

Where one disseisor quits possession and another enters, the latter cannot tack the time that the former held adversely, to the time of his own adverse holding, to complete the statutory time, unless there is a privity of estate between them.[59] An abandonment of one part of a tract for another will interrupt the statute; the possession must be the same in point of locality.[60]

Acknowledgment of Outstanding Title.—Acknowledgment by the disseisor of the ownership of another in the property, destroys the hostile character of the holding and interrupts the running of the statute.[61] Purchasing an outstanding claim, or offering to purchase such does not have this effect.[62]

[48] Turpin v. Saunders, 32 Gratt. 27; Benje v. Creagh's Admr., 21 Ala. 151; School Dist. v. Lynch, 33 Conn. 330.

[49] Brown v. Cockerell, 33 Ala. 38.

[50] Pray v. Pearce, 7 Mass. 381; Poignard v. Smith, 6 Pick. 172; Alexander v. Polk, 39 Miss. 737; Samuels v. Borrowscales, 104 Mass. 207; Clark v. Gilbert, 39 Conn. 94; Turpin v. Saunders, 32 Gratt. 27; Culver v. Rhodes, 87 N. Y. 348; Dixon v. Cook, 47 Miss. 220; Creekmur v. Creekmur, 75 Va. 430; Peterson v. McCollough, 50 Ind. 36; Beatty v. Mason, 50 Md. 409; Morse v. Williams, 62 Me. 445.

[51] Clark v. Gilbert, 39 Conn. 94; Brown v. Cockerell, 33 Ala. 38; Cook v. Babcock, 11 Cush. 206

[52] Close v. Samm, 27 Ia. 503; Trabout v. Daniels, 38 Ia. 138; Poignard v. Smith, 6 Pick. 172; Alexander v. Polk, 39 Miss. 737; Turpin v. Saunders, 32 Gratt. 27; Cook v. Babcock, 11 Cush. 209.

[53] Creekmur v. Creekmur, 75 Va. 430; Taylor v. Burnside, 1 Gratt. 165; Bliss v Johnson, 94 N. Y. 235; Joiner v. Borders. 32 Ga. 239; Wickliffe v. Eusor, 9 B. Mon. 253; Morse v. Williams, 62 Me. 445; Law v. Smith, 4 Ind. 56; Riggs v. Fuller, 54 Ala. 141; Tegarden v. Carpenter, 36 Miss. 404.

[54] McMullin v. Erwin, 58 Ga. 427; Sherin v. Brackett, 30 N. W. R. 551; Rayner v. Lee, 20 Mich. 384.

[55] Small v. Proctor, 15 Mass. 495; McEntire v. Brown 28 Ind. 347; Lessee of Potts v. Gilbert, 3 Wash. C. C. 475; Steeple v. Downing, 60 Ind. 478; Casey's Lessee v. Inloes, 1 Gill, (Md.) 430; Bliss v. Johnson, 94 N. Y. 235; Melvin v. Proprietors etc., 5 Metc. (Mass.) 15, 32.

[56] Sherman v. Kane, 86 N. Y. 57.

[57] Rayner v. Lee, 20 384; Hudgins v. Crow, 32 Ga. 367; Hughes v. Pickering, 14 Pa. St. 297; Stettnisch v. Lamb, 26 N. W. R. 374.

[58] Allen v. Holton, 20 Pick. 458.

[59] Riggs v. Fuller, 54 Ala. 141; Melvin v. Proprietors, etc., 15 Metc. (Mass.) 15; Wade v. Linsey, 6 Metc. (Mass.) 407; McEntire v. Brown, 28 Ind. 347; Lessee of Potts v. Gilbert, 3 Wash. C. C. 475; Steeple v. Downing, 60 Ind. 478, 502; Morrison v. Hays, 19 Ga 294.

[60] Lessee of Potts v. Gilbert, 3 Wash. C. C. 475; Griffeth v. Schwenderman, 27 Mo. 412; Messer v. Reginnitter, 32 Ia. 312.

[61] Davies v. Collins, 43 Fed. R. 31; Small v. Proctor, 15 Mass. 495, 499; Colvin v. Burnet, 17 Wend. 564, 569; Russell v. Erwin's Admr., 38 Ala. 44; Calhoun v. Cook, 9 Pa. St. 226.

[62] Small v. Proctor, 15 Mass. 495; Jackson v. Newton,

Entry of Owner.—Entry by the owner personally or by his agent duly authorized within the time of limitation, with an assertion of his claim, and with the intent to take possession, destroys the exclusiveness of the disseisor's possession, and prevents the further running of the statute.[63] Even an entry into land in behalf of another, by one having no authority at the time, being for the benefit of the one having the right, may be ratified and have this effect.[64]

A mere casual or stealthy entry will not do. To purge a disseisin the entry should be made with that intention; and such intention should be sufficiently indicated, either by the act itself, or by words accompanying the act.[65]

An entry by one of several heirs, or by one of several tenants in common, enures to the benefit of all.[66]

A. HOLLINGSWORTH.

Keokuk, Iowa.

18 John. 355; Jackson v. Smith, 13 John. 406; Northrop v. Wright, 7 Hill, 476; Chapin v. Hunt, 40 Mich. 595; Singer Manf'g Co. v. Tillman, 21 Pac. R. 818; Toby v. Secor, 60 Wis. 310, s. c., 19 N. W. R. 99; Griffith v. Smith, 42 N. W. R. 749. For contrary doctrine, see 1 Am. & Eng. Ency. of Law p. 272.

[63] Johnson v. Fitz George, 14 A. R. 752; Peabody v. Hewitt, 52 Me. 33; Taylor v. Burnsides, 1 Gratt, 165.

[64] Campbell v. Wallace, 12 N. H. 362; Fitchet v. Adams, 2 Stran. 1128.

[65] Burrows v. Gallop, 32 Conn. 493; Robinson v. Sweet, 3 Greenl. (Me.) 316; Jackson v. Shoonmaker, 4 John. 390.

[66] Shumway v. Holbrook, 1 Pick. 114; Vaughan v. Bacon, 15 Me. 455.

FRAUDULENT CONVEYANCE — NOTICE — KNOWLEDGE OF GRANTEE.

VAN RAALTE V. HARRINGTON.

Supreme Court of Missouri, Nov. 17, 1890.

1. A purchaser for value is not chargeable with notice of an intent to defraud creditors on the part of his vendor, by knowledge of facts which would put a prudent man on inquiry and lead to a discovery of the fraud, the question of notice in such case being one of fact for the jury.

2. Facts herein held evidence from which a jury would be justified in finding that the grantor intended to defraud his creditors.

3. Evidence sufficient to go to the jury on the question of the grantee's knowledge of the fraud.

The appellant was a pawnbroker and dealer in jewelry, and, to a limited extent, in other merchandise. L was a merchant in the same city. L offered to sell his entire stock to V, saying he was old and wanted to quit business. V examined the stock, and an invoice was taken, and a sale made, for $7,213, 65 per cent. of the cost, which was paid in cash. L paid from the proceeds of the sale $7,000 to his sons. He applied $200 on other debts. L and his sons testified that he owed them those amounts. A few days before the sale, to secure a debt of $2,000 to his son-in-law, L turned over to him goods to the amount of $3,000. These transactions left L without property, and owing some $10,000 for goods bought on time. V made inquiry of L as to his title, and of his wife whether she had any interest, but no inquiry was made as to L's indebtedness.

BLACK, J.: This is a controversy over a stock of merchandise consisting of dry goods, notions, clothing, hats, caps, and boots and shoes. Adolph Lederer being the owner and in possession of the goods, sold the same to Samuel Van Raalte who took immediate possession. Thereupon the defendant, as sheriff of St. Louis, levied upon the property by virtue of several writs of attachment sued out by the mercantile creditors of Lederer. Van Raalte then commenced this action of replevin, gave bond, and reacquired possession. The sheriff defends on the ground that the sale was one made in fraud of creditors, and that plaintiff purchased with full knowledge of the intended fraud.

* * * * * *

1. The point urged with so much confidence by the plaintiff, who is the appellant, that there is no evidence tending to show that Lederer intended to defraud his creditors, cannot be sustained. Lederer, it is true, had a right to prefer some creditors to others, and the fact that his sons were made the preferred creditors does not, of itself, furnish evidence of fraud; but the relationship is a fact to be considered with the other circumstances. Sons and sons-in-law figure at every turn of the evidence. The great effort on the part of the vendor seems to have been to get enough out of his property to pay off these favored persons, and there is some ground for making the deduction that the late purchases made by Lederer on time were made with a fixed purpose of never paying for the goods so purchased. In our opinion there is evidence of an intended fraud on the part of Lederer.

2. Nor do we agree to the proposition that there is no evidence tending to show notice to plaintiff of the intended fraud. It may be inferred from the evidence that the price paid by the plaintiff for the goods was less than their real value. The transaction was one entirely out of the usual course of business of the vendor, and this the plaintiff well knew. The plaintiff's agents were very cautious to make full inquiry as to whether the vendor had good title, and to that end interrogated his wife, but made no inquiry as to his indebtedness. On this subject there was a seeming studied silence. Direct and positive evidence of notice or knowledge by the vendee of the intended fraud is not required. Such notice or knowledge may be inferred from the circumstances. All the circumstances considered there is evidence which justified the court in submitting the question of good faith on

the part of the purchaser to the jury as a question of fact.

3. The court, at the request of the defendant, instructed the jury that if the transfer of the property from Lederer to plaintiff was made by Lederer with intent to hinder, delay or defraud his creditors, and the plaintiff "had knowledge of facts and circumstances from which such fraudulent intent might reasonably and naturally be inferred by an ordinarily cautious person, then said transfer of said property to the plaintiff is fraudulent and void, and the jury should find for defendant." The court gave other instructions of its own motion which are to the following effect: That if the vendee had knowledge of facts and circumstances sufficient to put a man of ordinary prudence upon inquiry touching the vendor's intention, and failed to make such inquiry, that such inquiry, if made, would have disclosed an intent of the vendor to defraud his creditors, then the sale was fraudulent on the part of the vendee, even though he paid a valuable consideration for the goods, and had no actual knowledge of the intent of the vendor to defraud his creditors.

There is no question of constructive fraud in this case. The sale of goods is attacked on the ground that it was made with intent to hinder, delay, or defraud the creditors of the vendor, and therefore within the second section of the statute concerning fraudulent conveyances. That statute does not apply to conveyances of property, real or personal, where the vendee is a *bona fide* purchaser for value. As the plaintiff paid a valuable consideration, and took immediate possession, it devolved upon the defendant to show that plaintiff was not a *bona fide* purchaser. In other words, to defeat the sale, defendant must show that it was made by the vendor to hinder, delay, or defraud his creditors, and that the vendee in some way participated in the intended fraud. By the instructions given, the vendee's participation is placed on the ground alone that he purchased with notice or knowledge of the fraudulent purposes of the vendor. These instructions do not, in terms, submit this question to the jury, but charge him with constructive notice or knowledge, if he knew of facts which would put a prudent person upon inquiry, and lead to a discovery of the fraud. Such facts are made equivalent to notice or knowledge. Such is the law in many courts, as will be seen from the authorities cited by respondent. It is the favorite doctrine of some of the text-writers. Wait, Fraud. Conv. (2d ed.) § 379; Bump, Fraud. Conv. (3d ed.) 494. This court, the respondent contends, has adopted the same rule; and, in support of the claim, we are cited to Rupe v. Alkire, 77 Mo. 642. In that case we said a refused instruction should have been given which concluded with these words: "And, if the jury believe from the evidence that sufficient knowledge was obtained by the plaintiff to put him on inquiry, then the jury have the right to infer that the plaintiff had knowledge of the fraudulent character of the transaction, if they further find it was in fact fraudulent." Thi instruction which we said should have been given in that case furnishes no precedent for the instruction given by the court in the case in hany. It is one thing to say knowledge may be inferred from facts and circumstances sufficient to put a person upon inquiry, and that is the effect of the refused instruction in that case; but it is a different thing to say such circumstances are, as a matter of law, knowledge. There is no element of constructive notice in the refused instruction in the Rupe-Alkire Case. It is left to the jury to find the facts as to whether the purchaser had knowledge of the fraudulent character of the transaction, while, in the case in nand, the designated facts are declared to be notice or knowledge, and that too without any regard as to what the actual fact may have been. Indeed this court, in substance, said, in State v. Merritt, 70 Mo. 275, that it was not the duty of every purchaser of goods to inquire into the motives of the vendor for making the sale; for such a rule would hamper the transfer of personal property to an extent which would be detrimental to commerce, and subversive of the policy which encourages a free and untrammeled traffic in such property. The very question now under consideration came before the court of appeals in Parker v. Conner, 93 N. Y. 118. That was a suit to recover damages for an alleged unlawful seizure and sale of personal property which the plaintiff had purchased from Hallaran. The question was whether the sale to plaintiff was one made in fraud of creditors. The trial court instructed the jury that facts and circumstances sufficient to put a prudent person upon inquiry constituted notice of the fraud. The conclusion of the court of appeals is expressed in these words: "We think that in cases like the present, when an intent to defraud creditors is alleged, the question to be submitted to the jury should be whether the vendee did in fact know or believe that the vendor imtended to defraud his creditors, not whether he was negligent in failing to discover the fraudulent intent, and that on general principles, independently on the statute, the same rules are applicable in such cases as are applied for the purpose of determining the *bona fides* of a holder of commercial paper." The same doctrine is asserted in Coolidge v. Heneky, 11 Or. 327, 8 Pac. Rep. 281; Lyons v. Leahy, 15 Or. 8, 13 Pac. Rep. 643; and in Carroll v. Hayward, 124 Mass. 120. The court in Knower v. Clothing Co., 57 Conn. 202, 221, 17 Atl. Rep. 580, when speaking upon the same question, said: "We have made these references to the decisions of this court for the purpose of showing that, in all cases where the title of a vendee has been attacked because of the intent on the part of the vendor to defraud his creditors by the transfer, those making the attack have been required to assume the burden of proving that the vendee had actual knowledge of and participated in the fraud, that is, that he had an intent to commit a fraud; this to be proven as a fact, and not to be

imputed by any rule of law." So in Seavy v. Dearborn, 19 N. H. 351, the court, speaking of the evidence and instruction as to the vendee's participation in an alleged fraudulent sale of goods, said: "The true issue presented is the question of actual knowledge. The evidence required is that which shall convince the jury that the party did know the unlawful purpose. * * * The evidence required by the instructions given to the jury at the trial comes short of this. Instead of knowledge, they were required only to find such facts as would have led an observer of common intelligence to perceive and understand the motives of Hills such facts being sufficient, according to the instructions, to have put the plaintiff upon inquiry, and to have charged him with knowledge. The effect of this language was to charge the plaintiff upon a mere constructive or implied knowledge of the fraud, and was therefore erroneous." The equity rule which charges one with knowledge of fraud, if he had knowledge of sufficient facts to put him upon inquiry, and lead to a discovery of the fraud had the inquiry been pursued, is open to several objections when used as a guide or formula for instructing the jury in cases like the present one. It lays out of sight, and disregards the actual fact. It measures the good faith of a confiding and unsuspecting vendee by the same standard that it does the shrewd and experienced trader. It makes the vendee a participant in the fraudulent purposes of the vendor, by constructive knowledge, while an actual intended fraud on the part of the vendor must be shown. The doctrine of constructive notice has no just application to cases like the one in hand. Where the vendee has paid a valuable consideration, and it is sought to avoid the sale because he had notice or knowledge of a fraudulent intent on the part of the vendor, the question to be submitted to the jury is whethe he had notice or knowledge of the fraudulent purpose of the vendor, and not whether he had knowledge of facts which would put a prudent person upon inquiry, and lead to a discovery of the fraud. This notice or knowledge need not be shown by direct and positive evidence. It may be inferred from other facts and circumstances. Facts which would put a person upon inquiry will be evidence from which inference may be drawn, but it should be left to the jury to make the inference. Such notice or knowledge may be proved like any other fact, and it is none the less actual notice or knowledge because inferred from the *res gestæ*. Some other questions are made in the briefs, but it is not likely they will arise on a new trial, and they are, therefore, not considered. For the error in the instructions before pointed out, the judgment is reversed, and the cause remanded.

NOTE.—Actual notice must be proved as any other fact. But it may be shown to have been given by every species of admissible evidence, whether it amounts to direct and positive proof or only to slight circumstances from which a jury would be justified in inferring notice.[1] Legal or implied notice, on the other hand, though sometimes applied to evidence barely sufficient to warrant a jury in inferring actual notice, and which slight opposing proof would repel, is an inference from certain facts, which is so strong that the courts will not allow of its being controverted.[2] Implied notice may be equally effectual with actual notice, and it may be shown by the same character of evidence; but it is not such notice as is barely sufficient to put a party upon inquiry. It is not the generally accepted doctrine that notice which makes it the duty of a purchaser to inquire, amounts to constructive notice of fraud, the law presuming that due inquiry will necessarily lead to its discovery.

The question of fraud is likewise one of fact which may be proved by every species of evidence. All of the facts and circumstances bearing on the good or bad faith of the transaction may be shown to establish it.[3] The court or jury may consider every kind of evidence which tends to establish conduct operating prejudicially to a creditor's rights, for fraud in that connection is any act which, by intention, withdraws the property of the debtor from the reach of his creditors.[4]

All of the declarations and admissions of a vendor before sale are admissible to show the intent with which the transfer was made.[5] But his statements after he has sold the goods are not admissible as evidence of fraud.[6] At least it is necessary to establish the vendee's participation in the fraud or his knowledge of it, by evidence entirely separate from the vendor's declaration after he has parted with his interest.[7]

But the main controversy in cases involving the alleged fraudulent transfer or conveyance of property is as to what circumstantial evidence will be sufficient to establish or to justify the court or jury in a finding of actual notice of fraud. The rule has been many times repeated that the fraudulent intent must have been shared by the buyer and seller alike to render the transaction fraudulent.[8] And the intent to defraud must be accompanied by an act which will actu-

1 Heirn v. Mill, 13 Ves. 120.

2 Cambridge Valley Bank v. Delano, 48 N. Y. 339; Heirn v. Mill, 13 Ves. 120; Rogers v. Jones, 8 N. H. 270; Claflin v. Lenheim, 66 N. Y. 306; Williamson v. Brown, 15 N. Y. 359; Griffith v. Griffith, 1 Hoffm. Ch. 155; Birdsall v. Russell, 29 N. Y. 220, 249; Townsend v. Wood, 109 U. S. 511; Kennedy v. Green, 3 Mylne and K. 699. See also Sterry v. Arden, 1 Johns. Ch. (N. Y.) 261. 267; Page v. Waring, 76 N. Y. 471.

3 Hills v. Stockwell & Darragh Fur. Co. 23 Fed. Rep. 432; Moose v. Riblet, 22 Fed. Rep. 501; Walcott v. Almy, 6 McLean 23; Howe v. Camp, Walk. Ch. 427; Knowlton v. Mish, 17 Fed. Rep. 198; Schaferman v. O'Brien, 28 Md. 565; Lewis v. Love's Heirs, 2 B. Mon. 345.

4 Alabama Insurance Co. v. Pettway, 24 Ala. 544; McKibbin v. Martin, 64 Pa. St. 352. See also Burbick v. Post, 12 Barb, 168.

5 Edgell v. Lowell, 4 Vt. 405; McLane v. Johnson, 43 Vt. 48.

6 Carney v. Carney, 7 Baxt. (Tenn.) 284.

7 Eaton v. Cooper, 4 Vt. 405.

8 Spring Lake Insurance Co. v. Waters, 14 N. W. Rep. 679; Horbach v. Hill, 5 Sup. Ct. Rep. 81; Spawn v. Martin, 17 Ark. 146; Partelo v. Harris, 26 Conn. 480; Howe Machine Co. v. Clairbourn, 6 Fed. Rep. 488; Ewing v. Runkle, 20 Ill. 448; Fraser v. Passage, 30 N. W. 334; Meixsell v. Williamson, 35 Ill. 529; Mehlhop v. Pettibone, (Wis.) 1 N. W. Rep. 553; Hessing v. McCoskey, 37 Ill. 341; Andrews v. Filmore, (Mich.) 9 N. W. Rep. 431; McDonald v. Hardin, (Ia.) 8 N. W. Rep. 473; Smith v. Schmitz, (Neb.) 7 N. W. Rep. 329. To the contrary see Wier v. Day, (Ia.) 10 N. W. Rep. 304.

ally hinder, delay or defraud the vendor's creditors,[9] and this must be pleaded and proved.[10]

The mere insolvency of the owner of property will not vitiate a transfer, for there are few instances in which transfers for a good and sufficient consideration made in good faith—the transferee having no notice or knowledge of any character of an intent to hinder, delay or defraud creditors—have not been protected.[11] This doctrine was maintained in the civil law. It is based upon the superior equity which the purchaser obtains when he parts with value upon the faith of the vendor's possession. The purchaser may obtain the legal title to the same extent by a sale in which he is in collusion with the vendor[12] or by a gift, as he could by a *bona fide* transaction. But the creditor trusted, to some extent at least, to the personal responsibility of his debtor; while the subsequent purchaser took on faith of the debtor's actual title to the specific property purchased,[13] and thus obtained not only the legal title, but an equity superior to that of the creditor.

Neither is it sufficient to establish fraud by showing that the vendor made statements prior to the sale indicating fraudulent intent on his part;[14] nor is relationship between the parties alone sufficient to invalidate a transfer or conveyance,[15] though it may be considered as evidence of intent in sales under suspicious circumstances.[16] But where the facts surrounding the sale are consistent with honesty of purpose, the fact that it is between near relations will not constitute a badge of fraud. If the good faith thereof is attacked, the fraud alleged must be proved.[17] In all cases, however, it is a conclusion which will be arrived at from the peculiar relations of the parties and the various circumstances surrounding the transaction the honesty of which is questioned.[18] But the rule now generally accepted is that it is not necessary to show that the vendee actually intended by his purchase to hinder, delay or defraud the vendor's creditors. Judge Rothrock, in Jones v. Heatherington,[19] says: "A fraudulent intent upon the part of the purchaser is not necessary to be established to defeat the sale. It is sufficient if it be shown that he knew of the fraudulent intent of the seller, or had notice of such facts as would have put a man of ordinary prudence upon inquiry, which inquiry would have led to a knowledge of the fraudulent purpose or intent of the seller."[20] A fraudulent intent is rarely susceptible of direct proof, and the principle is well established that the purchaser will be charged with notice of the character of the transaction when he is shown to have been acquainted with circumstances of suspicion that should have put him on inquiry, if those circumstances are sufficient to convince a court or jury of the truth of the fact.[21] He has only to have a knowledge of such facts as would excite the suspicion of an ordinarily prudent man, and if he then fails to make inquiry when inquiry would have put him into possession of the facts, he is not a purchaser in good faith, and will be charged with notice of any fraud upon creditors effected by the sale and transfer.[22] In the case of Burnham v. Brennan,[23] it appeared that the purchaser had paid a valuable consideration, and had testified, and the referee had found that he had no actual knowledge of the fraud which rendered the conveyance void against creditors, "but that he had sufficient knowledge to put him on inquiry, and that such knowledge was equivalent to notice," and in law amounted to notice. But if the question of actual knowledge was presented, it might be claimed that such knowledge or notice as this of any fact was only an inference of fact, and might be repelled by proof that the purchaser made the inquiry with due diligence and failed to discover the prior right.[24] But the court, in the principal case, went farther. It is in line with the opinion of Justice Miller, in Stearns v. Gage. All necessity of inquiry on the part of the purchaser is thereby removed, and he will not be charged with negligence for such failure, for the judgment is reversed on instructions to the effect that "if the vendee had knowledge of facts and circumstances sufficient to put a man of ordinary prudence upon inquiry touching the vendor's intention, and failed to make such inquiry, that such inquiry, if made, would have disclosed an intent of the vendor to defraud his creditors, then the sale was fraudulent on the part of the vendee." It is submitted that it is not the better or generally accepted doctrine, that he may be considered a purchaser in good faith who is shown to have had such notice as is referred to in the "erroneous" instructions. The court says: "Facts which would put a person upon inquiry will be evidence from which the inference of notice or knowledge may be drawn." But the objectionable instructions require more than that. They require the party seeking to avoid the transfer to prove not only notice sufficient to put a man of ordinary prudence upon inquiry, but that such inquiry, if made, would have disclosed an intent of the vendor to defraud his creditors. The doctrine laid down by the court opens a broad gateway for frauds against creditors. The purchaser is told that he may neglect to make inquiry on any notice of fraudulent intent on the part of his vendor,

9 Baldwin v. O'Laughlin, 11 N. W. Rep. 79.

10 Kerrick v. Mitchell, 24 N W. Rep. 151; Thompson v. Jackson, 3 Rand, 504.

11 Governor v. Campbell, 17 Ala. 566; Weisinger v. Chrisholm, 28 Tex. 780; Fifield v. Gaston, 12 Ia. 218; Steele v. Ward, 25 Ala. 535; Violett v. Violett, 2 Dana (Ky.), 233; Brown v. Foree, 7 B. Mon. 357; Harrison v. Philips' Academy, 12 Mass. 456; Byrne v. Becker, 42 Mo. 264; Leach v. Francis, 41 Vt. 670; Bancroft v. Blizzard, 13 O. 30.

12 Chandler v. Van Roeder, 24 Howard, 224; Mills v. Howeth, 19 Tex. 257; Bozman v. Dranghan, 3 Stew Ala. 243; Rogers v. Evans, 3 Ind. 574; Walcott v. Brander, 10 Tex. 419; Lowry v. Howard, 35 Ind. 170; Poagne v. Boyce, 6 J. J. Marsh. (Ky.) 70; Peck v. Land, 2 Ga. 1; Reed v. Carl, 11 Miss. 74.

13 Seymour v. Wilson, 19 N. Y. 417; Bump Fraud Con., 495.

14 Bixby v. Caskaddon, 18 N. W. Rep. 875.

15 Adams v. Ryan, 17 N. W. Rep. 159.

16 Bump Fraud Con., 96 and cases cited.

17 Curry v. Lloyd, 22 Fed. Rep. 258; Adams v. Ryan. See also Stadtler v. Wood, 24 Tex. 622; Baughman v. Penn, 6 Pac. Rep. 890. Courts of equity will presume fraudulent intent from the circumstances of the parties. White v. Trotter, 22 Miss. 30; Ward v. Lamberth, 13 Ga. 150; Gallatian v. Cunningham, 8 Cowan, 361; Kendall v. Hughes, 7 B. Mon. 368; Pope v. Andrews, Smedes & M. Ch. 132; King v. Moon, 42 Mo. 551; Briscoe v. Bronaugh, 1 Tex. 326; Booth v. Brunce, 33 N. Y. 139; Burch v. Smith, 15 Tex. 219; Chesterfield v. Jaussen, 2 Ves. Sr. 155; 1 Sto. Eq. 190.

18 Jones v. Emery, 40 N. H. 348; Hollister v. Loud, 2 Mich. 309; Forsyth v. Matthews, 14 Pa. St. 100; Colquitt v. Thomas, 8 Ga. 258; Parkhurst v. McGraw, 24 Miss. 134; Baldwin v. Buckland, 11 Mich. 389; Gardiner v. Gerrish, 23 Me. 46; Hamilton v. Beall, 2 Har. & J. 214.

19 45 Ia. 681.

20 Zuver v. Lyons, 40 Ala. 510.

21 Green v. Tantum, 19 N. J. Eq. 105.

22 State v. Estel, 6 Mo. App. 6; Bartles v. Gibson, 17 Fed. Rep. 293; Gollober v. Martin, 6 Pac. Rep. 267.

23 74 N. Y. 597.

24 Williamson v. Brown, 15 N. Y. 354.

and declare when the transfer is assailed that he had no "actual knowledge" of such intent.

The opinion in Baker v. Connor,[25] referred to in the main case, follows the rule laid down by Justice Miller in Stearns v. Gage. He said that the facts were not such as to raise any question of constructive notice, and added: "Be that as it may, however, we think that it is not material, as actual knowledge is required where a valuable consideration has been paid. * * * * Circumstances to put the purchaser on inquiry where full value has been paid are not sufficient." Judge Haight, in following this rule in Farley v. Carpenter,[26] said: "The decision appears to have been the unanimous decision of the judges of the court voting. It is squarely in point, and we should not feel at liberty to disregard it, even though we had doubts in reference to its being correct." Judges Smith and Harrison added that they concurred "in the result on the ground that this court is bound to follow the rule laid down in the court of appeals in Stearns v. Gage." The doctrine was afterwards approved in Connor v. Parker.[27]

JESSE A. MCDONALD.

[25] 93 N. Y. 118.
[26] 27 Hun (N. Y.), 359.
[27] 93 N. Y. 118.

CURRENT EVENTS.

MEETING OF MISSOURI JUDGES.—We find in the *American Law Review* an interesting account of the convention of Missouri judges, recently held at Jefferson City. It has become a custom among them to hold a conference each year for the purpose of taking into consideration what recommendations they will make to the legislature, touching uncertainties and incongruities in the statute law. This meeting seems to have been very liberally attended. The conference was presided over by Hon. John L. Thomas, who delivered an instructive address. A memorial of the late Judge Burckhart was adopted. Judge Seymour D. Thompson presented a proposed amendment to section 2612 Rev. Stat. 1889, on the subject of liability of railroads for the killing of live stock, which amendment is intended to obviate the omission in the statute under the ruling in Lafferty v. H. & St. J. R. Co., 44 Mo. 291, which was agreed to. Judge Rombauer proposed a draft for an amendment to section 2396 Rev. Stat. 1889, as to the relinquishment of dower by wife, to bring the same into harmony with section 6869, which was also adopted. Judge Bacon gave some entertaining object lessons of the workings of the present law, touching changes of venue in civil causes, and an interesting discussion ensued thereon. It was finally resolved that the existing statutes on that subject fail to secure a prompt and impartial administration of justice. It was the general opinion of those present, that upon proof of the existence of a statutory ground for a change of venue, the trial judge should have power in his discretion to cause an election of a special judge, to call another circuit judge, or to send the case for trial into another circuit, as the interests of justice in the particular cause might demand.

ILLINOIS STATE BAR ASSOCIATION.—The 16th annual meeting of the Illinois State Bar Association was recently held at Springfield. The annual address, by President Bradwell, contained a number of important suggestions, and set forth at considerable length the inconvenience of the present plan of the supreme court of that State, mounted on wheels and perambulating the State, instead of sitting at the capital. Mr. Bradwell advocated a union of the three divisions, and an increase of the compensation of the supreme judges to at least an equality with the highest salary paid to a circuit judge. The special papers read at this meeting were of more than usual interest. Hon. C. C. Bonney read a learned paper on "The Relations of the Police Power of the States to the Commerce Powers of the Nation." The address of Hon. Seymour D. Thompson, on "The Power of the People over Corporate and Individual Corporations and Monopolies," was full of thought and originality. Hon. Elliot Anthony spoke on "The Need of a Constitutional Convention," and Mr. Henry Wade Rogers, on "Legal Education." The committee on law reform, through Hon. Harvey B. Hurd, reported in favor of a reform in the real estate registry laws of the State, calling especial attention to the merits of the "Torrens system." For the ensuing year, James M. Riggs, of Winchester, was elected president, and W. L. Gross, of Springfield, secretary and treasurer.

JETSAM AND FLOTSAM.

RIGHT OF CORPORATION TO SUE FOR LIBEL.—When may a corporation sue in respect of a libel? The answer to this question was given more than thirty years ago by Chief Baron Pollock and Barons Martin and Watson in The Metropolitan Saloon Omnibus Company v. Hawkins, 4 H. & M. 87; 28 Law J. Rep. Exch. 401. The corporation of Manchester have just made an ineffectual effort to break through the rules there laid down. The defendant in the case of The Mayor, Aldermen and Citizens of Manchester v. Williams, Notes of Cases, p. 128, wrote to a local newspaper charging the city council with "scandalous and abominable expenditure," of which the bulk of the members were "in woeful and pitiable ignorance," and alleging that large sums had been lost by lax management, and that bribery and corruption had prevailed. So terrible did this accusation appear to the corporation that an action for libel was at once commenced. But the law as laid down by Chief Baron Pollock in the case cited is this: "That a corporation in common law can sue in respect of a libel there is no doubt. It would be monstrous if a corporation could not maintain an action for slander of title through which they lost a great deal of money. It could not sue in respect of an imputation of murder, or incest, or adultery, because it could not commit those crimes; nor could it sue in respect of a charge of corruption, for a corporation cannot be guilty of corruption, although the individuals composing it may." This *dictum* disposes of the case as far as the allegation of bribery and corruption was concerned, and it only remained for the corporation to argue that it was a *dictum* unsupported by authority, and to urge that the alleged scandalous and extravagant expenditure must be the work of the collective body, and not of the individuals. The argument, however, was of no effect, and the plaintiffs were successful only in emphasizing Chief Baron Pollock's exposition of the law, and converting a part of it from a *dictum* into a binding authority.—*London Law Journal.*

RECENT PUBLICATIONS.

THE UNWRITTEN CONSTITUTION OF THE UNITED STATES, a Philosophical Inquiry into the Fundamentals of American Constitutional Law. By Christopher G. Tiedeman, A.M., LL.B., Professor of Law in the University of Missouri, Author of Treatises on "The Limitations of Police Power," "The Law of Real Property," and "Law of Commercial Paper." G. P. Putnam's Sons: New York, 27 West Twenty-third street; London, 27 King William street, Strand. The Knickerbocker Press. 1890.

This 12mo. volume of 170 pages, is in effect a philosophic inquiry into the fundamentals of American constitutional law, by a man whose attainments and reputation eminently fit him for its successful treatment. It pretends to and does treat only of those portions of the American constitution which may be said to be written between the lines. And as it discusses questions of what might be termed practical political interest, it will be found useful even outside the profession. It treats of the origin and development of municipal law in general, and of constitutional law, of the electoral college, of the re-eligibility of the president, of the inviolability of corporate charters and charter rights, a subject which, with the increase and development of corporations, is each day presenting more perplexing problems. It discusses the doctrine of natural rights in American constitutional law, the subject of the constitution in the war of secession, of citizenship in the United States, and of State sovereignty and right of secession. The cardinal rule of interpretation of written constitutions is laid down, and the real value of written constitutions made clear. The constitutional lawyer will find within its pages much food for thought and many new ideas.

QUERIES.

QUERY NO. 3.

Has a municipality, under the laws of Missouri, through its council, a legal right to close a public thoroughfare existing within its limits, more than twenty-one years. That is to say: After the property forming such thoroughfare has been duly condemned, paid for by the city and used continually for public purposes. Would not such an act, if carried into execution, amount to confiscation of the purposes originally intended and would not said property so forming such thoroughfare revert to original owners. Please cite authorities. S.

QUERY NO. 4.

A, being a foreign or non-resident guardian and curator, brings suit against a curator in this State for money found on a final settlement to be due the non-resident wards, and ordered paid over by the probate court of this State (Missouri) to non-resident guardian and curator. Now, since the filing of suit and before judgment, the minors arrive at their majority, can the guardian and curator proceed to judgment, or does guardianship terminate when minors arrive at majority? X. Y. O.

HUMORS OF THE LAW.

Judge—"Have you ever seen the prisoner at the bar?"

Witness—"No, sir; not exactly that; but I've seen him at an original package shop."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ABSTRACTS OF TITLE—Liabilities.—Where an abstract company prepares an abstract on the order of a vendor, and delivers it to him, warranting it to be a true and perfect abstract of the title, it is liable for omissions from the abstract to a vendee who had refused to buy without one, and completed the purchase in reliance on the one furnished by the company.—*Dickel v. Nashville Abstract Co.*, Tenn., 14 S. W. Rep. 896.

2. ANIMAL—Injury by.—In an action to recover damages for an injury caused by a vicious and dangerous domestic animal, owned and kept by the defendant, the *gravamen* is the neglect of the latter to restrain such animal after notice of its vicious propensity.—*Fake v. Addicks*, Minn., 47 N. W. Rep. 450.

3. ASSIGNMENT BY FIRM FOR BENEFIT OF CREDITORS.—The voluntary assignment by a firm of the partnership estate for the benefit of their creditors, without reservations, preferences, or stipulations, exacting full release from participating creditors, and which is valid in other respects, will not be rendered void because the individual property of the partners is not included in the assignment.—*McFarland v. Bate*, Kan., 25 Pac. Rep. 238.

4. ASSIGNMENT FOR BENEFIT OF CREDITORS—Preferences.—In an assignment by a firm for the benefit of creditors, a preference to the father of one of the partners for the amount loaned his son to put into the business when he formed the partnership is valid, though the debt was first evidenced only by the individual demand note of his son, which was subsequently surrendered, and the partnership note payable in one year substituted, the latter note being given some months prior to the assignment, and prior to the ascertained insolvency of the firm.—*Nordlinger v. Anderson*, N. Y., 25 N. E. Rep. 992.

5. BOUNDARIES—Government Surveys.—The monuments and boundary lines as established by the United States government survey control the description of lands patended by the United States, and mistakes in the surveys cannot be corrected by the judicial department of the government.—*Chan v. Brandt*, Minn., 47 N. W. Rep. 461.

6. CARRIERS—Contract.—Where a carrier takes goods

giving a receipt excluding liability "for the dangers of navigation, fire, collision, or delivery, except to land goods on dock or pier," and fails to deliver them to the consignee, the burden is upon it to show that the goods were landed on the dock or pier.—*Browning v. Goodrich Transp. Co.*, Wis., 47 N. W. Rep. 428.

7. CARRIERS—Injuries to Passengers.—A railroad company is liable for injuries sustained by a passenger in jumping from a moving train, to which he is impelled by fear of injury to life or limb, induced by the conductor joining with others in simulated threats to rob the passenger, bind him, and throw him from the train.—*Spohn v. Missouri Pac. Ry. Co.*, Mo., 14 S. W. Rep. 881.

8. CARRIERS—Injuries to Passengers—Evidence.—Civil Code Cal. § 484, absolving railroad companies from responsibility for injuries received by passengers while riding on the platform of a car in violation of the printed and posted regulations of the company, does not apply where the person so injured went upon the platform, in the exercise of ordinary care and prudence, to escape the consequences of an accident which he feared from the unusual speed at which the train was running.—*Mitchell v. Southern Pac. R. Co.*, Cal., 25 Pac. Rep. 245.

9. CEMETERIES—Sale of Lots—Validity.—A corporation, organized under Laws N. Y. 1847, ch. 133, to hold land "to be used exclusively for a cemetery or place for the burial of the dead," sold 400 of its lots to its superintendent. It appeared that the object of the sale was to raise money for the corporation, and the consideration was a certain sum paid down, and the assumption of a mortgage on the land: *Held*, that the sale was not void, as being contrary to the policy of the statute, or against public policy. Affirming 47 Hun, 636, *mem.*—*Palmer v. Cypress Hills Cemetery*, N. Y., 25 N. E. Rep. 983.

10. CERTIORARI.—*Certiorari* is the proper remedy for reviewing an order of a drainage district enlarging its boundaries, where no appeal lies from such order, and the error complained of appears on the face of the record.—*Drainage Com'rs v. Griffin*, Ill., 25 N. E. Rep. 995.

11. CHATTEL MORTGAGE — Acknowledgment. — A chattel mortgage is valid between the parties without acknowledgment. For the purposes of record, it must be acknowledged; but where it does not appear from the record that the officer taking the acknowledgment is legally disqualified by reason of his interest in the estate or property mortgaged, the instrument may properly be received for record, and such record will be notice to subsequent creditors and mortgagees.—*Bank of Benson v. Hove*, Minn., 47 N. W. Rep. 449.

12. COMPROMISE — Setting Aside. — A compromise effected by parties with all the facts before them, and without fraud or bad faith on the part of either, will not be disturbed.—*Thompson v. Sawyer*, Ky., 14 S. W. Rep. 909.

13. CONSTITUTIONAL LAW — City Ordinance.—*Held*, that section 9 of the charter of San Jose, empowering the city council "to define, prevent, and remove nuisances," and to fix penalties by fine or imprisonment, is constitutional, and one imprisoned for maintaining a nuisance in a street contrary to an ordinance made in pursuance thereof, and providing a penalty of the same character, though less in degree than that prescribed by the statute, will not be released on *habeas corpus*.—*Ex parte Taylor*, Cal., 25 Pac. Rep. 258.

14. CONSTITUTIONAL LAW—Extermination of Animals.—Under County Government Act Cal. § 25, subd. 28, giving boards of supervisors power to provide for the destruction of squirrels or other wild animals, such boards have no authority to require land-owners, under a penalty, to exterminate within 90 days the ground-squirrels on their respective lands, and thereafter to keep the lands clear thereof.—*Ex parte Hodges*, Cal., 25 Pac. Rep. 277.

15. CONSTITUTIONAL LAW—Local and Special Laws.—St. Cal. 1877-78, p. 953, provides that the criminal court of such city and county may sentence a prisoner on conviction to the house of correction in any case where he might be imprisoned in the county jail: *Held*, that this is not a special or local act relating to the punishment of crime, within the meaning of Const. Cal. art. 4, § 25.—*Ex parte Williams*, Cal., 25 Pac. Rep. 248.

16. CONSTITUTIONAL LAW—Retroactive Laws.—One charged with a larceny in Washington Territory prior to its admission as a State is entitled under the constitution of the United States to a presentment by a grand jury, and cannot be prosecuted by information under the authority of the constitution of Washington and the act of January 29, 1890, in pursuance thereof, since the substitution of prosecution by information for that by indictment was not a mere change of procedure, but affected a substantial right, which could not be taken away by retroactive legislation.—*McCarty v. State*, Wash., 25 Pac. Rep. 299.

17. CONTEMPT—Newspaper Publication.—A publication made by a newspaper immediately after a judge of the superior court has sustained a demurrer to a petition with leave to amend, falsely charging him, in so doing, "with deliberate lying about the law, deliberate, intentional falsification in his official capacity, and deliberate, intentional denial of justice," with being a "fool," an "impudent rascal, a criminal on the bench," is a flagrant abuse of the liberty of the press, and an "unlawful interference with the proceedings of a court," within Code Civil Proc. Cal. § 1209, subd. 9.—*Ex parte Barry*, Cal., 25 Pac. Rep. 256.

18. CONTRACT—Rescission—Fraud.—A vendee, on discovery of fraud in the sale of land, may maintain an action to rescind the sale on account of such fraud, although the deed contains a covenant of warranty, and he does not allege that he has been evicted or disturbed in his possession of the land by the holder of a superior title.—*Bleeding v. Flannery*, Ky., 14 S. W. Rep. 907.

19. CONTRACTS—To Refund Taxes Paid.—In an action to recover money paid, by plaintiffs' testator for defendant, the petition alleged that defendant wrote plaintiffs' testator that if he would pay certain taxes if he, defendant, would reimburse him if he got title in a foreclosure suit pending between them and others. The petition also stated that testator was influenced to pay the taxes by the letters, and that with the knowledge of defendant he made the payment: *Held*, that this was a sufficient allegation of acceptance of defendant's offer.—*Allen v. Chouteau*, Mo., 14 S. W. Rep. 869.

20. COUNTY BOARDS—Road Improvements.—The board of county commissioners has authority to act in all matters pertaining to the establishment and construction of county roads at a special session convened upon oral notice from the county auditor.—*Loesnitz v. Seelinger*, Ind., 22 N. E. Rep. 1037.

21. COUNTY COURT—Jurisdiction.—Under our statute the county court is granted original jurisdiction over the subject of county roads, and in a proper case the circuit court may, upon a writ of review, correct its errors.—*Heiple v. Clackamas County*, Oreg., 25 Pac. Rep. 291.

22. COVENANT—Measure of Damages.—A vendee who has lost his land by reason of title paramount to that of his remote vendor is not limited in his recovery from such remote vendor, for breach of warranty, to the amount which such vendee paid for the land, but may recover the amount which such remote vendor received for the land.—*Brooks v. Black*, Miss., 8 South. Rep. 332.

23. CREDITORS' BILL.—Pleading.—In a creditors' suit under Rev. St. Wis. § 3029, to reach property of the judgment debtor which had been fraudulently transferred, defendant, the fraudulent grantee, cannot for the first time on appeal raise the objection that the complaint failed to comply with the provisions of Cir. Ct. Rule 28, that the complaint shall allege the true sum due on the judgment forming the basis of the action.—*Schuerman v. Matthews*, Wis., 47 N. W. Rep. 423.

24. CRIMINAL LAW—False Pretenses.—An information alleging that W T was deceived of property by the

false pretenses and representations of J R J made to W G T, without alleging his agency for the principal, is not a sufficient allegation, nor is it *q. e. d.* that J R J intended to defraud W T.—*Jacobs v. State*, Neb., 47 N. W. Rep. 422.

25. CRIMINAL LAW—Homicide—Reasonable Doubt.—It is error to charge that a reasonable doubt is "such a doubt as would induce a man of reasonable firmness and judgment to act upon it in matters of importance to himself."—*People v. Bemmerly*, Cal., 25 Pac. Rep. 266.

26. CRIMINAL LAW—Justifiable Homicide—Arrest.—Under Mansf. Dig. Ark. § 2002, an officer making an arrest for an offense not committed in his presence, and which he had no reasonable ground to believe was a felony, cannot justify the killing of the party arrested, though it was done in self-defense.—*Robertson v. State*, Ark., 14 S. W. Rep. 902.

27. CRIMINAL LAW—Larceny.—At the trial of two persons charged with the larceny of a load of wheat, it is not error for the trial court to reject evidence tending to show that the father of one of the persons charged tried to hire other persons to haul the wheat to town, and declared that he had hired the prisoners to do so.—*State v. Romain*, Kan., 25 Pac. Rep. 225.

28. CRIMINAL LAW—Perjury.—On a trial for an offense, false testimony tending to prove an *alibi* is upon a material point, and will support a conviction for perjury.—*State v. Gibbs*, Mont., 25 Pac. Rep. 289.

29. CRIMINAL LAW—Receiving Stolen Goods.—In a trial for buying stolen property, knowing it to be stolen, evidence that defendant bought the property from an ex-convict for one-fourth of its value, and that he afterwards denied having it, and made contradictory statements about it, is sufficient to show that he knew it to be stolen.—*Huggins v. People*, Ill., 25 N. E. Rep. 1002.

30. CRIMINAL PRACTICE—Burglary.—Where an indictment for a single act of burglary contains two counts, which differ only in the allegation of the ownership of the premises broken into, a verdict of guilty as charged in the indictment will warrant a sentence under either count.—*Longford v. People*, Ill., 25 N. E. Rep. 1009.

31. CRIMINAL PRACTICE—Withdrawal of Plea of Guilty.—*Held*, that under the showing made the court should have permitted the defendants to withdraw the plea of guilty entered theretofore and have allowed the substitution of the plea of not guilty.—*City of Salina v. Cooper*, Kan., 25 Pac. Rep. 223.

32. DEED—Construction.—Where the owner of an alley and adjoining lots conveys part of them, describing them as fronting on a certain street, and "with a depth of 85 feet to an alley fifteen feet in width," the deed carries title to the middle of the alley, with an easement of way over the other half, the grantor having a like easement over the half conveyed.—*Lindsay v. Jones*, Nev., 25 Pac. Rep. 297.

33. DEED—Conveyance to Infant Daughter.—A father conveyed land to his infant daughter, her heirs and assigns forever, by deed reciting that the same was to be held in trust by her grandfather until she became of age: *Held*, that title vested directly in the daughter upon delivery of the deed for record.—*Annis v. Wilson*, Colo., 25 Pac. Rep. 304.

34. DEED—Defective Acknowledgment.—An officer who has made a defective certificate of a married woman's acknowledgment to a deed cannot correct the defect after the expiration of his term, although he still holds the office by virtue of a re-election.—*Griffith v. Ventress*, Ala., 8 South. Rep. 312.

35. DEED — Estate Conveyed. — The conveyancing clause of a deed, "granted, bargained, and sold to H E B." The *habendum* clause was "to have and to hold unto the said H E B, wife of the said R W B, and to her children by him begotten, forever:" *Held*, that the *habendum* clause controlled the conveyancing clause, the grantor, intending the former clause to operate as an *addendum* or proviso to the latter clause.—*Bodine's Adm'r v. Arthur*, Ky., 14 S. W. Rep. 904.

36. DOWER—Evidence.—In a suit by a widow for dower, evidence cannot be received against her of admissions that he held the land in trust for another made by her husband after it had been sold on execution against him, and when he had no seisin in fact nor constructive possession, and no estate in law or equity, in the land.—*Davis v. Evans*, Mo., 14 S. W. Rep. 875.

37. DOWER—Evidence in Ejectment.—A married man purchased land at a partition sale, part cash, balance on time. Judgment was rendered against him, and execution levied before the price was wholly collected. Before execution sale, the price was paid, but the partition deed was not executed and delivered until after execution sale. The purchaser at execution sale received a sheriff's deed, and took possession. The husband died without ever having actual possession: *Held* that, on the full payment of the price, the parties to the partition suit became seised of the legal title in trust for said purchaser, and the widow was entitled to dower.—*Davis v. Green*, Mo., 14 S. W. Rep. 876.

38. DRAINAGE DISTRICT—Negligence.—A drainage district, being a mere public involuntary *quasi* corporation, only authorized to raise funds for drainage purposes by special assessment on the property benefited, is not liable in damages for the tortious or negligent acts of its commissioners.—*Elmore v. Drainage Commissioners*, Ill., 25 N. E. Rep. 1010.

39. EJECTMENT—Equitable Defenses.—A vendee who is in possession of land under a title-bond, but who has failed to pay the price, cannot be ejected in an action at law, since he is the equitable owner of the land, and under his bond for title must be treated as the holder of the fee subject to the vendor's lien.—*Morton v. Dickson*, Ky., 14 S. W. Rep. 905.

40. EJECTMENT—Parties.—Where defendant in ejectment admits that he is in possession of the land when it is demanded of him, the tenant from month to month by whom he holds possession is not a necessary party defendant.—*City of Napa v. Howland*, Cal., 25 Pac. Rep. 247.

41. EJECTMENT—Verdict.—In ejectment, the verdict was that plaintiff was "entitled to the possession of the land described within the following boundaries," etc.; but there was nothing to show that the verdict referred to the land described in the complaint or answer or the patents and deeds introduced in evidence, and no natural monuments were mentioned in the boundaries given: *Held*, that the verdict and judgment based on it were insufficient.—*Northern Ry. Co. v. Jordan*, Cal., 25 Pac. Rep. 273.

42. ELECTION—Change of County-seat.—A majority of the votes was given in favor of removing a county-seat, but more votes were given against removal than in favor of any one of the places to which it was proposed to make the removal: *Held*, under Mansf. Dig. Ark. § 1160, that the second election must be between two places in favor of removal to which the largest number of votes were cast, and the old county-seat should not be nominated as one of the places to be voted for in the second election.—*Blackshear v. Turner*, Ark., 14 S. W. Rep. 897.

43. ELECTION BY WIDOW.—A widow, to whom her husband had bequeathed certain property, took such property and executed a sealed instrument reciting that she elected to take the legacy and to release her dower. The property she took was much less than she would have received had her husband died intestate: *Held*, that she was not estopped from renouncing the provisions of the will and claiming dower, since her acts had in no way prejudiced the devisees.—*Ward v. Ward*, Ill., 25 N. E. Rep. 1012.

44. ESTOPPEL.—In order to estop an owner from asserting title to his property, by his declarations or conduct, it must appear that he was at the time apprised of the true state of his title; that he knew, or had reason to believe, his declarations or conduct would be acted upon by another; that they were acted upon by such other person in ignorance of the title; and that such person will be injured by allowing

the truth of the admission by the declaration or conduct so acted upon by him to be disproved.—*Pennsylvania Co. v. Platt*, Ohio, 25 N. E. Rep. 1028.

45. FALSE REPRESENTATIONS—Defense.—Where one of two contracting parties is fraudulently induced to execute a written instrument upon false representations that it expresses the agreement which they had made, the party defrauded may defend against the enforcement of the fraudulent instrument by the other party, even though he may be chargeable with want of prudence in relying upon the false representations.—*Maxfield v. Schwartz*, Minn., 47 N. W. Rep. 448.

46. FIXTURES—Buildings on Land of Life-tenant.—One who has erected buildings on the land of a life-tenant has no right to remove them under an agreement made with him by the life-tenant that he might erect and remove them.—*Demby v. Parse*, Ark., 14 S. W. Rep. 899.

47. FRAUDULENT CONVEYANCE—Husband and Wife.—Where an insolvent debtor conveys land to his wife in consideration of money which she had advanced to him long before, and which he had never promised to repay, and of her assumption of certain other debts which she pays out of the profits of the land, and he continues to manage the land after the conveyance as before, without accounting in any way to her, the conveyance may be set aside as fraudulent.—*Coale v. Moline Plow Co.*, Ill., 25 N. E. Rep. 1016.

48. FRAUDULENT CONVEYANCE—Parent and Child.—In the absence of a fraudulent intent, a father may accept from his son property in payment of an actual *bona fide* indebtedness, provided the fair value of the property does not exceed the amount of the debt.—*Peregoy v. Krantz*, Neb., 47 N. W. Rep. 422.

49. GARNISHMENT—Indebtedness.—In garnishee proceedings to collect from a railroad company money claimed to be due from it to an employee, it appeared that the company was running a quarry in a remote place; that it had established a boarding-house and store for its employees, the company being answerable for their bills, and deducting them from their wages; that at the time of the garnishment the debtor had worked for the company 15 days, and that his bill for board and supplies exceeded the amount which he had earned: *Held*, that the creditors had failed to show affirmatively, as required by law, that the company was indebted, and that a judgment in his favor would be set aside.—*Union Pac. Ry. Co. v. Gibson*, Colo., 25 Pac. Rep. 300.

50. GARNISHMENT — Unliquidated Damages. — Under Rev. St. Ill. ch. 62, § 1, which allows a judgment creditor to garnishee any person who is indebted to the judgment debtor, or has any effects of such debtor in his possession, one who is liable to such debtor in an unliquidated amount for breach of warranty is not subject to garnishment.—*Capes v. Burgess*, Ill., 25 N. E. Rep. 1000.

51. GRANT OF SWAMP LANDS—Forfeiture.—The grant of swamp lands to the intervenor by Sp. Laws 1875, ch. 54, was a grant *in præsenti* upon conditions subsequent. Such a grant is not forfeited by a mere breach of the conditions, but only by some affirmative action on part of the State after the breach, declaring or asserting the forfeiture on account of the breach.—*Minneapolis & St. C. R. Co. v. Duluth & W. R. Co.*, Minn., 47 N. W. Rep. 464.

52. GUARDIAN AND WARD—Accounting.—A guardian may, without direction of court, pay out of his ward's funds a mortgage which is a direct lien on the ward's land, and which, if left unpaid, would probably extinguish the ward's estate in the land.—*Cheney v. Roodhouse*, Ill., 25 N. E. Rep. 1019.

53. HAWKERS AND PEDDLERS.—One who goes about a village carrying samples and taking orders for a non-resident firm is not a hawker or a peddler.—*Village of Cerro Gordo v. Rawlings*, Ill., 25 N. E. Rep. 1006.

54. HIGHWAY—Establishment.—Under Rev. St. Wis. § 1265, providing for the laying out of highways by the town supervisors upon a petition addressed to them by six freeholders of the town, a petition describing the proposed highway by giving its termini and the township, range, quarter section, numbers, and lots through which it is to run, referring to the recorded plats of that portion of the village, is sufficiently accurate.—*State v. O'Connor*, Wis., 47 N. W. Rep. 433.

55. INJUNCTION—To County Auditor.—An injunction will not be granted at the suit of a tax-payer to restrain the county auditor from issuing a warrant for the payment of an alleged illegal claim allowed against the county by the board of supervisors, as the county may compel the auditor to refund the money in an action at law if the warrant is in fact illegally issued.—*Winn v. Shaw*, Cal., 25 Pac. Rep. 244.

56. INSURANCE—Conditions of Policy.—Where a fire insurance policy refers to a survey of the insured premises and the application as a warranty on the part of the insured, the right of the company to rely on such application and survey is not defeated by the fact that they were not furnished until after the policy was delivered, and that they were written on blanks prepared for the use of another insurance company.—*Rankin v. Amazon Ins. Co.*, Cal., 25 Pac. Rep. 260.

57. INTOXICATING LIQUORS—License.—Under section 5, ch. 50 Comp. St., known as the "Slocum Law," an applicant granted license to sell malt, spirituous, and vinous liquors upon payment of the amount of the license fee is required to pay the same into the treasury before the issuance of the license, and no formal tender of the amount to the treasurer, without payment, will support an action against another officer refusing to issue the license.—*Claus v. Hardy*, Neb., 47 N. W. Rep. 418.

58. JUDGMENT — Action Against Administrator.—A judgment against an administrator in a foreign State for a debt due from his intestate is not even *prima facie* evidence of the validity of the debt so as to affect land in Illinois.—*McGarvey v. Darnall*, Ill., 25 N. E. Rep. 1005.

59. JUDGMENT—Burnt Records.—To a petition to restore a judgment the record of which has been burned, an answer is sufficient which shows that the defendant had a good defense to the action in which the judgment was rendered, and that, without fault of his, he was deprived of the opportunity of asserting the defense by the fraud and collusion of the plaintiffs and a co defendant in that action.—*Guess v. Amis*, Ark., 14 S. W. Rep. 900.

60. JUDGMENT—Res Adjudicata.—Privies.—A judgment rendered upon personal service, not reversed or vacated, affecting real estate, or some interest therein is binding and conclusive between the same parties and the privies of such parties.—*Challiss v. Mayor of the City of Atchison*, Kan., 25 Pac. Rep. 228.

61. JUDGE—Powers in Another District.—Const. Mont art. 8, § 12, does not of itself confer authority to grant an injunction in chambers on a judge who is holding court in a district other than his own. Where a district judge is holding court for another, as allowed by Const. Mont. art. 8, § 12, and adjourns the trial of a cause from Saturday until Monday, when he proceeds with it, he is not in the meantime a judge of the court in that district, within the meaning of Code Civil Proc. Mont. § 172, which provides that an injunction may be granted "by the court in which the action is brought or by the judge thereof," and hence he cannot grant an injunction in chambers.—*Wallace v. Helena El. Ry. Co.*, Mont., 25 Pac. Rep. 278.

62. LEASE—Assignment—Covenant.—Where a lease of real estate contains a covenant to pay the taxes assessed upon the premises during the continuance of the lease, an assignee thereof in possession is bound by the covenant to pay them, and if paid by the lessor he may recover the same, after they become due, of such assignee.—*Wills v. Summers*, 47 N. W. Rep. 463.

63. LEASE—Construction.—The owner of land granted it to others by a so-called "lease" for the purpose of boring for oil and gas thereon, with the right to the grantees to appropriate all oil or gas found therein, on payment of a certain royalty to the grantor. The term was expressly stated as being "twelve years from this date, or as long as oil is found in paying quantities:"

Held, that the length of time during which oil is found in paying quantities fixes the duration of the term.—*Eaton v. Alleghany Gas Co.*, N. Y., 25 N. E. Rep. 981.

64. LEASE—Surrender.—Where a tenant, before the expiration of his lease, notifies his lessor that he can no longer pay the rent, and abandons the premises, and the lessor, without having stated whether he would accept the surrender, takes exclusive possession, it amounts to an acceptance.—*Kneeland v. Schmidt*, Wis., 47 N. W. Rep. 438.

65. LICENSE—Revocation.—There was a parol agreement between plaintiff and defendant by which defendant gave plaintiff a right of way for a ditch over his land, plaintiff to survey, excavate, and keep in repair the ditch, which should be used by both plaintiff and defendant in irrigating their lands: *Held*, that plaintiff having constructed and kept in repair the ditch, and it having been used by both parties, the agreement became an executed license, which defendant would be restrained from revoking.—*Flickinger v. Shaw*, Cal., 25 Pac. Rep. 268.

66. LICENSE — Revocation — Water course.— Plaintiff and defendant, owners of adjoining lands, so situated that surface and spring water collecting on defendant's land was discharged over plaintiff's land, construed, by agreement, a drain to convey such water, each constructing the part of the drain required on his own land. The drain was beneficial to plaintiff, and furnished water for his stock: *Held* that, plaintiff having expended money in constructing the drain, under the agreement, defendant was liable in damages for interrupting or diminishing the flow of water by digging up the drain on his own land.—*Ferguson v. Spencer*, Ind., 25 N. E. Rep. 1035.

67. LIMITATIONS—Part Payment.—Defendant owed plaintiff a balance upon an account, and gave him an order upon a third person for the amount thereof, or for such less sum as was due him by such person. The latter promised to pay the order when he ascertained the amount due, and finally gave plaintiff his notes for less than the sum due from defendant, and plaintiff credited the amount due on defendant's account. The order was taken with the understanding that whatever was received thereon should be applied to the discharge of defendant's indebtedness: *Held*, that the transaction amounted to a part payment by defendant on the date the notes were given, and relieved the remainder of the debt from the statute of limitations.—*Bufington v. Chase*, Mass., 25 N. E. Rep. 977.

68. LIMITATION OF ACTIONS—Sheriff—Negligence.—Under Gen. St. Colo. § 2166, providing that all actions against sheriffs upon any liability for the omission of any official duty, except for escapes, shall be brought within one year "after the cause of action shall have accrued, and not after that period," a cause of action against a sheriff for negligence in levying an attachment accrues when the alleged consequential injury was suffered, and not when the alleged non-feasance occurred.—*People v. Cramer*, Colo., 25 Pac. Rep. 302.

69. MANDAMUS.—On proceedings for a writ of mandate to compel the officers of a school-district to rebuild, on the old site, a school-house destroyed by fire, as they had been directed by the electors of the district in school meeting assembled, the officers cannot raise the question of the paramount title to the site, as its possession by the district for a number of years for school purposes is *prima facie* evidence of ownership in the district.—*Eby v. Board of School Trustees*, Cal., 25 Pac. Rep. 241.

70. MECHANIC'S LIEN—Agreement. — By written contract defendant R purchased of defendant N, certain land with the buildings thereon, and went into immediate possession. Plaintiff sold to R machinery, which he used in constructing a mill on the land, and which became a part of the freehold. Thereafter, R and N made a settlement by which the agreement for purchase was canceled, and N went into possession. At the time of such settlement, N knew of the improvements that had been made by R: *Held*, that though the machinery was sold to R on his agreement to pay therefor with stock, still, he having failed to make such payment, plaintiff, who had complied with the provisions of the statute in regard to filing, was entitled to a lien on the building, and the interest in the land owned by R at the time the machinery was bought. — *Kerrick v. Rugles*, Wis., 47 N. W. Rep. 437.

71. MECHANICS' LIENS—Notice.—In a notice of a claim of lien for work and materials furnished a corporation, whose name is the "Installment Building & Loan Company," under a contract made with the corporation itself, it is an immaterial variance that the defendant is styled the "Installment Building & Loan Association." — *Installment Building & Loan Co. v. Wentworth*, Wash., 25 Pac. Rep. 298.

72. MORTGAGES—Foreclosure.— A junior mortgagee in possession, on whose mortgage a large sum is still due after charging him with the rents, will not, on foreclosure of the prior mortgages, be compelled to pay into court the rents for which he is chargeable before a sale of the land is ordered, but will only be required to apply such rents on the deficit in case the land should not sell for enough to pay off the prior liens.— *Jefferson v. Edrington*, Ark., 14 S. W. Rep. 903.

73. MORTGAGE — Foreclosure Proceedings. — A junior mortgagee, who becomes a party defendant to a foreclosure proceeding, and prays a foreclosure of his mortgage, must serve the mortgagors with a copy of his cross-complaint, under Code Civil Proc. Cal. § 442; and, in the absence of such service, a foreclosure by default is erroneous, although the mortgagors, after proper service of summons in the original complaint, failed to appear at all in the case.— *White v. Patton*, Cal., 25 Pac. Rep. 270.

74. MORTGAGE—Foreclosure.—The mortgage provided that in the event of foreclosure, "reasonable attorney's fees, to be taxed by the court, shall be allowed to the plaintiff:" *Held*, that an averment that $200 is a reasonable attorney's fee, "for the collection of said promissory note, and for the foreclosure of said mortgage," was simply an averment that said sum was a reasonable attorney's fee in said foreclosure suit. — *First Nat. Bank of Riverside v. Holt*, Cal., 25 Pac. Rep. 272.

75. MUNICIPAL AID TO RAILROADS—Bonds. — A proposition to issue bonds to a railway company is in the nature of a contract, upon the acceptance of which both parties are bound by the agreement. — *Wullenwaher v. Dunnigan*, Neb., 47 N. W. Rep. 420.

76. MUNICIPAL CORPORATION—City Council— Election. —Where judgment of ouster is pronounced against persons holding seats in a city council, and they are ousted therefrom on the ground that the wards from which they claimed to have been elected had no legal existence, such judgment of ouster does not create vacancies in the council which may be filled by a special election.—*State v. Kearns*, Ohio, 25 N. E. Rep. 1027.

77. MUNICIPAL CORPORATIONS — De Facto Officers. — The right of the 15 aldermen of the city of Saginaw, added to the common council by Local Acts Mich. 1889, No. 455, to hold their office, will not be collaterally determined in an action by a tax payer to restrain the common council from issuing bonds for the erection of a city hall, as such aldermen are at least *de facto* officers, and their acts in that capacity valid. — *Carlisle v. City of Saginaw*, Mich., 47 N. W. Rep. 444.

78. MUNICIPAL CORPORATION — Issuance of Bonds — Elections. — The charter of Atlanta authorizes the mayor and council to provide a special method for registration of voters prior to any municipal election in that city: *Held*, that the rule that two thirds of those voting would be sufficient was abolished (1) by its omission from the constitution; (2) by the general act, (section 508*l*;) and (3) by the provision of the charter; that the provision of the charter suspended the general act in regard to municipal elections in the city of Atlanta; and that, where a special registration was required prior to a special election for the issuance of the bonds, in that city the question whether two-thirds

of the qualified voters thereof voted in favor of the issuance of the bonds was to be determined by such registration.—*Gavin v. City of Atlanta*, Ga., 12 S. E. Rep. 262.

79. MUNICIPAL CORPORATIONS— Public Improvements —Competitive Bids.—Title 6, § 15, of the city charter of Grand Rapids, which empowers the common council to direct an additional assessment where a greater sum has been expended in the completion of an improvement than was originally estimated by the board of public works, did not enable the council to tack to a street-grading contract another contract for paving the gutters on such street, thereby materially increasing the cost of the work over the estimate of the board of public works, and over the original contract price, without again submitting the work to competitive bidding. — *Ely v. City of Grand Rapids*, Mich., 47 N. W. Rep. 447.

80. MUNICIPAL CORPORATION — Street Grading. — St. Cal. 1871-72, p. 804, provides that certain street grading cannot be ordered by the supervisors unless a majority of the frontage of lots petition therefor. Certain grading was done upon a petition from which it did not certainly appear whether the petitioner owned a majority of the frontage or not: *Held*, that since the board must necessarily have passed upon the sufficiency of the petition before ordering the work done, it was properly presumed to be sufficient, and testimony to the contrary was rightly excluded.— *Spaulding v. North San Francisco Railroad Ass'n.*, Cal., 25 Pac. Rep. 249.

81. MUNICIPAL ELECTIONS — Common Council.—The provision of the city charter of Oakland, granted in 1854, giving the common council exclusive jurisdiction to determine an election contest for the office of councilman, was impliedly repealed by Code Civil Proc. Cal. § 1111 *et seq.*, providing that any elector of a county or city, or of any political subdivision of either, may contest for causes therein stated, and that such contest must be determined by a special session of the superior court.—*McGiveny v. Pierce*, Cal., 25 Pac. Rep. 269.

82. NEGLIGENCE—Custom and Usage.—Evidence of general custom, or of the amount of care exercised by men in general in similar circumstances, is competent upon the question whether a person exercised ordinary care in the custody of a bailment.—*Armstrong v. Chicago, etc. Ry. Co.*, Minn., 47 N. W. Rep. 459.

83. NEGLIGENCE—Dangerous Premises. — Defendants were owners of a building occupied by tenants, and used for workshops. From the entrance, which was always open, there were steps to a door which opened on a hallway, in which were mail-boxes for the tenants, and for the accommodation of the mail carrier. The carrier, while putting a letter for a tenant in his box, was injured by reason of the dangerous condition of the premises: *Held*, that in an action by him against defendants, these facts would sustain a finding that he was authorized to believe that he might visit the boxes, by the implied invitation of defendants, for the convenience of their tenants.— *Gordon v. Cummings*, Mass., 25 N. E. Rep. 978.

84. NEGOTIABLE INSTRUMENTS—Bona Fide Purchaser. —A purchaser of a note before maturity is not affected by a judgment against the makers, as garnishees of the payee, where he had no notice of the garnishment, and it is immaterial that the payee held the note when the proceedings were instituted, no steps being taken to impound it, and he being able to transfer it with all the evidence of ownership and authority. — *Head v. Cole*, Ark., 14 S. W. Rep. 898.

85. NEGOTIABLE INSTRUMENTS—Consideration.—Notes given for the stock of a telephone company whose only method of carrying on business is by the infringement of the patents of other telephone companies are without legal consideration, and void.—*Clemshire v. Boone County Bank*, Ark., 14 S. W. Rep. 901.

86. NEGOTIABLE INSTRUMENTS—Grace. — In Arkansas, a bill payable at sight is entitled to grace. — *Wards v. Sparks*, Ark., 14 S. W. Rep. 898.

87. NEGOTIABLE INSTRUMENTS— Transfer. — The fact that a note is payable "on or before" a certain date does not affect its negotiability. — *First Nat. Bank of Springfield v. Skeen*, Mo., 14 S. W. Rep. 732.

88. NUISANCE—Action to Abate.— *Held* upon the facts that this was not an action to abate a private nuisance, but a private action to abate a public nuisance.— *Meiners v. Frederick Miller Brewing Co.*, Wis., 47 N. W. Rep. 430.

89. PHYSICIANS—Licenses.—Section 3 of chapter 40 of the Session Laws of 1881 confers express authority upon cities of the second class to pass an ordinance providing for the levy and collection of a license tax upon doctors, practicing medicine in such cities. — *City of Girard v. Bissell*, Kan., 25 Pac. Rep. 232.

90. PRACTICE—Dismissal of Action. — An entry made and signed by the plaintiff's attorneys in the clerk's register, that "the above action is hereby dismissed," is effectual as a dismissal of the action.—*Nichols v. State Bank of Minneapolis*, Minn., 47 N. W. Rep. 462.

91. PUBLIC LANDS— Fractional Lots. — According to the government survey and plat, fractional lot No. 3, in a certain section, contained 26 acres in the northern portion of the N. E. 1-4 of the N. W. 1-4 of the section. The plat showed the rest of the E. 1-2 of the N. W. 1-4 of the section to be a lake, the meandered line of which was the southern boundary of the fractional lot; in fact, there was no lake in the E. 1-2 of the N. W. 1 4 of the section: *Held*, that the patent to the lot gave title only to the north 40 acres of the E. 1-2.— *Whitney v. Detroit Lumber Co.*, Wis. 47 N. W. Rep. 425.

92. PUBLIC LAND—Town Sites.—Where the judge who holds land under the United States town-site act, in trust for the occupants, executes an official deed for a part of it, the presumption obtains that he did his duty in all respects by compliance with all the statutory prerequisites, and that he conveys it to proper party; and one not a beneficiary of the trust, but a mere stranger to the title, cannot litigate or call in question the validity or regularity of the deed in those respects. —*Taylor v. Winona & St. P. R. Co.*, Minn., 47 N. W. Rep. 453.

93. PUBLIC LAND—Mexican Grant.—*Held*, that the Mexican grant, as confirmed and patented by the United States to plaintiff, included the whole space lying within its exterior boundaries, and that defendant had acquired no title under his patent.—*De Guyer v. Banning*, Cal., 25 Pac. Rep. 253.

94. RAILROAD COMPANIES—Violation of Ordinance—Evidence.—In an action against a railroad company for the death of plaintiffs' intestate, alleged to have been occasioned by defendant's having run its train at a speed in excess of that allowed by a city ordinance, the testimony of a witness, who saw the train, that it was running from 18 to 20 miles an hour, is competent to show the speed.—*Walsh v. Missouri Pac. Ry. Co.*, Mo., 14 S. W. Rep. 873.

95. RAILWAYS IN STREETS—Damages to Abutting Owners.—Where a railway company unlawfully constructs its road in a public street so as to interfere with the private rights of abutters, it constitutes a continuing trespass, for which successive suits for damages may be brought, so long as the trespass is continued, until the occupation ripens into title by prescription.— *Lamm v. Chicago, etc. Ry. Co.*, Minn., 47 N. W. Rep. 455.

96. REAL ESTATE AGENT.—Defendant agreed to pay plaintiff a commission for selling land when the vendees paid defendant a certain sum, and gave their notes and mortgage for the balance. The vendees executed their notes, but never paid the money: *Held*, that plaintiff could not recover.—*McPhail v. Buell*, Cal., 25 Rac. Rep. 266.

97. REAL ESTATE BROKERS—Commission.—Where a real estate broker, employed, for a commission to be paid, to procure a purchaser for property, presents to the principal a proposed purchaser, it is for the principal then to decide whether the person presented is acceptable, and if, without any fraud, concealment, or

other improper practice on the part of the broker, the principal accepts the person presented, and enters into an enforceable contract with him for the purchase of the property, the commission is fully earned.—*Francis v. Baker*, Minn., 47 N. W. Rep. 452.

98. RECEIVER—Appeal.—A receiver cannot appeal from any order relative to his rights and duties as receiver unless authorized to do so by the court.—*McKinnon v. Wolfenden*, Wis., 47 N. W. Rep. 436.

99. REPLEVIN—Pleading.—In replevin, the plaintiff may allege generally that he is the owner, and entitled to the possession of the property, and, under it, prove any right of property, general or special, that entitles him to possession.—*Miller v. Adamson*, Minn., 47 N. W. Rep. 452.

100. SCHOOLS AND SCHOOL-DISTRICTS—School Taxes.—Where a school-district has been in existence for many years, and during that time has continued to receive money out of the county school fund, and has had several special taxes levied and collected for its benefit, a person on whose property such a tax is levied is precluded from attacking the legality of the organization of the district.—*State v. Central Pac. R. Co.*, Nev., 25 Pac. Rep. 296.

101. SCHOOLS AND SCHOOL-DISTRICTS—Chairmen.—The words in section 2601, Hill's Code, "oldest in office of the directors present," mean the director who has served the longest term as such under an election, and such director has the authority and it is his duty to preside as chairman at all school meetings of his district.—*State v. McKee*, Oreg., 25 Pac. Rep. 292.

102. SCHOOL TREASURER—Liability for School Funds.—Where a treasurer of the board of education of a city of the second class gives an ordinary official bond upon taking the possession of his office, and afterwards upon the order of the board of education gives an additional bond with substantially the same condition as the first bond, but with different sureties, and when his term of office expires he fails to deliver to his successor in office the balance of the school fund due to the school corporation, and the board of education commences an action therefor, against him and his sureties on both bonds, *held*, that two causes of action are not improperly joined.—*Gilbert v. Board of Education of the City of Newton*, Kan., 25 Pac. Rep. 226.

103. SUBROGATION—Assignment of Securities.—If a defendant, who upon paying the debt sued for will be subrogated to the right of the plaintiff in collateral security for the debt, desires, upon payment of the judgment, a formal assignment of the security to himself, he must ask for such relief in his answer.—*Barton v. Moore*, Minn., 47 N. W. Rep. 460.

104. SUPERSEDEAS—Filing Bond.—Upon an appeal from an order, proceedings on it are stayed, and rights under it saved, only as of the date of filing the *supersedeas* bond. The *supersedeas* does not relate back to the date of the order so as to annul proceedings already had, or to restore rights under it which had previously expired.—*Woolfork v. Burns*, Minn., 47 N. W. Rep. 460.

105. TAXATION—Banks.—Under Rev. St. Tex. 1879, art. 4684, pl. 4, as amended by Laws Tex. 1883, p. 111, providing that private bankers shall list for taxation their money on hand and in transit, and in the hands of others subject to draft, except treasury notes, and their bills receivable and other credits, and that from this aggregate shall be deducted the amount of "money on deposit," they are entitled to deduct the full amount due depositors, though part of the money deposited may have been treasury notes, "money on deposit" being general deposits, and not special deposits held by the bank as a bailee.—*Griffin v. Heard*, Tex., 14 S. W. Rep. 892.

106. TAXATION—Constitutional Law.—The Kentucky statute of 1880, imposing a tax each year for the benefit of the Agricultural & Mechanical College of Kentucky, an institution incorporated by law, and under State control, is not in violation of Const. Ky. art. 11, which provides that the fund known as the "Common-School Fund," together with any sum raised in the State by taxation, or otherwise, for purposes of education, shall be held inviolate for the purpose of sustaining common schools, and that such funds may be appropriated in aid of common schools, but for no other purpose.—*Higgins v. Prater*, Ky., 14 S. W. Rep. 910.

107. TAXATION—Equalization.—Pub. Acts Mich. 1889, No. 195, which provides a new method for the collection of taxes, but which protects the rights of a delinquent tax-payer, and gives him a day in court to show the invalidity of the tax, is valid even as to taxes assessed and returned before the passage of the act.—*Auditor General v. Reynolds*, Mich., 47 N. W. 442.

108. TAXATION—Equalization.—Under How. St. Mich. § 501, which makes it the duty of the chairman of the county board to sign every order, resolution, and determination of such board, a purchaser at a tax-sale gets no title where the apportionment and equalization of the tax of the county board was not signed by the chairman.—*Weston v. Monroe*, Mich., 47 N. W. Rep. 446.

109. TAXATION—Exemption.—The regents of the university of Michigan, who are declared a body corporate by Const. Mich. 1850, art. 13, §§ 7, 8, and given a general supervision over the university, which is supported by public taxation, are a public corporation, constituting a department of the State; and property owned by them is within the protection of Pub. Acts Mich. 1885, No. 153, § 3, subd. 1, which exempts from taxation all public property belonging to the State.—*Auditor General v. Regents of the University*, Mich., 47 N. W. Rep. 440.

110. VENDOR AND VENDEE—Contract or Option.—*Held*, that the contract in controversy was a valid contract of sale and not an option.—*Benson v. Shotwell*, Cal., 25 Pac. Rep. 249.

111. VENDOR'S LIEN—Satisfaction.—A deed reserved a vendor's lien to secure a note given for part of the purchase money. The vendor passed the note to his wife, who surrendered it to the vendee on receiving from him a deed of the land to her for the lives of herself and the vendor. The vendee testified that this deed was given in satisfaction of the lien. The vendor denied this. The lien was never released of record: *Held*, that the evidence justified a finding that the deed was not accepted by the vendor in satisfaction of his lien.—*Martin v. Field*, Ill., 25 N. E. Rep. 1004.

112. WILL — Construction. — A testator devised his property to his widow for life, and directed that, upon her death, it should be sold by his executors, who from the proceeds should pay $1,000 each to two of his grandchildren, and distribute the residue among testator's children, "or their heirs." One of the children conveyed her interest in the land, and then died before the termination of the life-estate: *Held*, that her heirs, and not her grantees, took her share of the estate, since the devise over did not vest until the death of testator's widow.—*Ebey v. Adams*, Ill., 25 N. E. Rep. 1013.

113. WILL—Construction.—Testator gave to his executors power to sell any and all personal and real estate of which he should die seised and possessed, as they should deem proper, and to invest the proceeds, and he gave to his wife, "during the term of her natural life, the use, income, and profit of all my property, real, personal, and mixed, of every nature whatsoever." By a subsequent clause of his will he gave "all the remainder and residue of all" his estate to his six children: *Held*, that testator intended to give his wife only the use of the estate, and did not intend that she should have possession and control of the body of the estate.—*Schehr v. Look*, Mich., 47 N. W. Rep. 445.

114. WITNESS—Impeachment. — A witness cannot be impeached by evidence of statements made by him out of court, unless his attention has been called on cross-examination to the time and place of the alleged statement.—*Aneals v. People*, Ill., 25 N. E. Rep. 1022.